

Baron and Feme.

A
TREATISE
OF THE
COMMON LAW
CONCERNING
Husbands and Wives.

Wherein is contained

The Nature of a Feme Covert, and of Marriages,
Bastardy, the Privileges of Feme Coverts: What Altera-
tions are made by Marriage as to Estates, Leases, Goods
and Actions.

What Things of the Wife accrue to the Husband by the
Intermarriage, or not.

What Acts, Charges, Forfeitures by the Husband, shall
bind the Wife after his Death, or not.

Of Jointures and Pleadings, Fines and Recovery, Convey-
ances, and other Law Titles relating to Baron and Feme.

Of Wills, and Feme Covert being Executrix.

Of the Wife's Separate Disposition and Maintenance.

What amounts to the Disposition of the Wife's Term by
the Husband.

Of Actions brought by or against Baron and Feme.

What Actions done, or Contracts made by the Wife, shall
bind her Husband.

Of Indictments and Informations against them.

Of Baron and Feme's Joinder in Action.

Of a Feme Sole Merchant.

Declarations and Pleas, &c. of Divorces, &c. with many
other Matters relating to the said Subject; and some
useful Precedents.

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at his Shop in Vine-Court, Middle-Temple. 1700.

Thom. Tanner.

To the Reader.

TO THE

READER.

HAVING Methodized and Explained the Law concerning Infants, by a natural Chain of Thought, I was prompted to reflect upon the Law as it respects the Parents: And I had some reason to conceive and hope, that a Treatise of this nature (having been never hitherto designedly perused) might meet with an Entertainment agreeable. It is a Subject so copi-

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ous that we shall find something or other relating to *Baron and Feme* in almost every Folio of our Law-Books, either in respect of Conveyances, Acts Judicial, Acts in *Pais*, Testaments, Actions or Pleadings, &c. All which I have here Methodized, Explained or Corrected, as occasion lead me to it.

I have herein considered *Baron and Feme* in all the Circumstances of Life, from the Solemnization of Marriage to the Divorce, and have not omitted those Collateral By-blows, (the Title of *Bastardy* making a considerable figure in our Books,) and the Variety of the Matter made me some Attonement for the Labour.

I have been something tedious in considering what Alterations are made by the Intermarriage as to Estates, Leases, Chattels and Actions, and

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and what Things of the Wife accrue to the Husband by the Inter-marriage, or not; and what Acts, Charges or Forfeitures made or committed by the Husband, shall bind the Wife after his Death, as well knowing that they are of frequent use, and consequently carefully to be examined.

But I have not been over-sollicitous in Attornments, Disseisins, Remitters and Warranties, and such like, which have a respect to real Actions concerning Feme Coverts; our Law having been much abridged and altered in such Cases, and our Settlements and Deeds of Trust as they are now framed, will strike off, and abate many of the Moot Cases; and whoever has a mind to be curious about them, may with great Satisfaction consult the first Institutes, where they are largely

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and most excellently handled. However, I have not totally omitted them, but have touched on some Cases which may be obvious in Practice, and by which an ingenious and well-disposed Student may improve his Notions, without heaping up other Cases or Points, one whereof perhaps may not be started in his Practice once in an Age. Only in the Section where and in what Cases *Baron and Feme* shall take by Interest or Moyeties, I have been more exact for that it is a curious and useful Learning.

As to what Acts or Contracts made by the Wife shall bind the Husband, the Resolutions of our Books have not been very consistent till that great Case (in point of Consequence I mean) of *Scott and Manby*, which was solemnly debated and settled in the *Exchequer-Cham-*

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Chamber by as Learned Judges as ever sat at one time in *Westminster-Hall*. Which long Arguments I have abridged and reduced to certain Propositions.

We likewise find our Books have been very wavering about *Baron and Feme's Joinder* in Action; but I have brought them into seven or eight Rules, by which a Studious Mind may easily be directed how to advise in such Cases.

And under every several Action brought by or against Husband and Wife, I have shewed the manner of Declaring and Pleading under each Action, which makes the Chapters of Declarations and Pleadings much shorter than they would have been.

As

To the Reader.

As for the Faults herein committed, I have no way but (*me ipsum tegere*) to shelter my self under the *Coverture* of your Candor and Ingenuity.

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BARON

BARON and FEME:

OR

**A TREATISE of the Law
concerning *Husbands and
Wives.***

CHAP. I.

The Consideration of Marriage in the Eye of the Law. Of Affiances, and where the Breach thereof is punishable. When the Solemnization of Marriage in the Church began; and how the ancient manner of Espousals was. If Marriage be once done by one in Orders, not to be dissolved for a defect of Ceremony, as to Time, Place or Licence.

THERE is no Consideration respected in the Law so much as the Consideration of Marriage, in regard of the Establishment of Families by Alliances, and the Continuance of them by Posterity: And *Inst. 9. 6* therefore at Common Law, if a Man had given Lands to a Man with his Daughter in Fränkmarriage,

B

riage,

Baron and Feme: Or,

riage, a Fee-simple had passed without this word (*Heirs*) and at this day it is an Estate of Inheritance in Tail; and how valuable a Consideration it is for the raising of Uses every days Practice and Experience can testify.

Sponsalia dicuntur futurarum nuptiarum conventio & repromissio, Glanvil lib. 6. c. 1.

If one be affianced to a woman and then forsake her, he is to be sued in Court Christian, and not in a Court of Equity, for breach of this Oath; *Si petit ipsum canonice inimicitia*, yet she may have remedy for the damages she sustained for the Non-performance of the Agreement, though others have said that it was her Folly to trust his word, and therefore she had no remedy; *Quid Deus est procurator fatuorum*. But its not to be doubted but a good remedy lies upon an *Assumpsit* at Law, as hereafter will in several Cases appear.

When the Solemnization of Marriage in the Church began.

Before the time of Pope *Innocent III.* there was no Solemnization of Marriage in the Church, and then it was first ordained; but before the said Ordinance Marriage was solemnized in such form, *viz.* The Man came to the House where the Woman inhabits, and in the presence of her Friends and Relations, took the Woman to his own House; and this was all the Ceremony; and for this reason the Man is said *ducere uxorem*, and then the Wife was said *nupta viro*, by reason she is *quasi cooperta nube* (this Man) to whom she hath subjected her self by Agreement of Marriage. Now to read the several Forms of Marriage in the several Countries of the World is very delightful, but is not to the purpose of my present design, *Moor 170.*

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Now by our Law Marriage being once lawfully solemnized, and without impediment, all the World cannot dissolve it if it be done by one in Holy Orders, let it be at what time and place it will be; as the Case was in *Siderfin's Reports*, the Party was married at twelve of the Clock at Night in an Ale-house.

And in *Car. 2.* a Libel was brought against *J. S. Parson*, in the Spiritual Court for marrying without Licence in a Church. *J. S.* moves for a Prohibition in the *King's Bench*, suggesting that the Church is donative, and that the Donor ought *ex jure*, to appoint Commissioners to inspect and visit this, and that the Ordinary cannot intermeddle with it. The Suggestion is good by *Twisden*: But the other Justices, because *J. S.* had another Living Presentative, would not grant a Prohibition.

By whom and at what time.
Sid. 64.
Tarry and Brown.

Sid. 432.
Maddox ver-
sus the Chan-
cellor of Pe-
terborough.

CHAP. II.

The Nature of a Feme Covert. Wherein a Feme Covert and an Infant differ as to Priviledge. What Acts the Husband may do to the Wife, and what the Wife to the Husband; and the Explication of the Rule that they are one person in Law. And in what respects she is said to be sub potestate viri. Of the change of her Name and Dignity.

The Nature of a Feme Covert.

COverture is *segers* in Latin, and is so called for that the Wife is *sub potestate viri*. The Law of Nature hath put her under the Obedience of her Husband, and hath submitted her Will to his, which the Law follows, *cui ipsa in vita sua con-*

Inst. 112.

tradere non potuit, and therefore will not bind her by her Acts joyning with her Husband, because they are judged his Acts, and not hers; she wants Free Will as *Minors* want Judgment, and yet the Law of the Land for necessity sake makes bold with this Law of Nature in a special kind, and therefore allows a Fine levied by the Husband and his Wife, because she is examined of her free will judicially by an authentional person trusted by the Law, and by the King's Writ, and so taken in a sort as a sole Woman; as also when she comes in by Receipt, *Hob. 225.*

Wherein a
Feme Covert
and an Infant
differ.

A Feme Covert in our Books is often compared to an Infant, both being persons disabled in the Law, but they differ much; an Infant is capable of doing any Act for his own advantage, so is not a Feme Covert. A Lease made by an Infant without Rent is not void, but voidable; but its void in the case of a Feme Covert. If a Feme Covert enter into Bond, *Non est factum* may be pleaded to it; but if an Infant enter into Bond he must plead the special matter that he was under Age. An Infant may bind himself for conveniences, as necessities for himself and Family, and the Law giveth him authority so to bind himself; but a Feme Covert cannot do so without the consent actual or implied of the Husband, because thereby she is to bind another that hath all the property in her Estate, as was the Opinion of the Lord Chief Justice *Hale* in *Scot and Manby's Case*. And yet a Feme Covert is a Favourite of the Law, and therefore the Law gives her *rationabile Estoverium*, till Dower assigned: And its said in some of our Books an Action lies not by the Executors against her for her *Paraphernalia*: But more of this *infra*.

a Inst. 18.

What Acts the Husband may do to the Wife, and the Wife to the Husband, though they are but one person in Law.

Baron and Feme are commonly said to be one person in Law; the consequents of which are, that a Man cannot grant Lands and Tenements to his Wife; and also if a joint Estate be made of Lands to Baron and Feme and to a third person, in this Case the Husband and Wife shall have but a moiety, and for this reason also, if the Husband discontinues the Land of his Wife and takes back an Estate to him and his Wife, the Wife is remitted, and so is the Husband, though he cannot say so; for she cannot be remitted but the Husband also must be remitted, for they are one person in Law, *Vide plus sub Titulo Moyeties.* 1 Inst. 112.

Though Baron and Feme be but one person in Law so as neither of them can give any Estate or Interest to the other, yet if a Charter of Feoffment be made to the Wife, the Husband, as Attorney to the Feoffor, may make Livery to the Wife; so a Feme Covert that hath power to sell Land by Will may sell the same to her Husband, because they are but Instruments to others, and the Estate passeth from the Feoffor or Devisor, *1 Inst. 188.*

Though our Law makes the Woman subject to the Husband, yet he may not kill her but it is Murder; he may not beat her, but she may pray the peace, *1 Ed. 4. 1.* So he may not starve her, but must provide Maintenance for her. Nay, so near is this oneness of Husband and Wife respected in the Law, that if the Husband enter into Obligation for the Durels of his Wife the Bond shall be void. Siderfin 123.

A Wife by the Law of God is *sub potestate viri*; and her Name of Dignity is changed. It was a pretty Case of *Sherwood, Hill.* *2 Car. 1. B. R.* In Change of her Name.

Trespals the Defendant justifies the taking by the command of *J. Potts Armiger* and *Darne Ursula* his Wife, and Exception was taken to it, because a Gentleman may not have a Lady to his Wife; and held a good Exception to the Writ. A Writ of Partition was brought against the Duke of *Sussex* and his Wife by *Ranulph Howard* Esquire and *Dominam Annam Powes uxorem ejus*, and Exception was taken because she was not named by the Name of her Husband, and held a good Exception; but it was amended and made *Ad respondend. R.H. & Annæ uxori suæ nuper uxor Domⁱ Powes defuncti.*

Dyer 29. b.

Vide infra, of the Name of Nobility being lost or not by the Marriage.

C H A P. III.

Of Bastardy.

Of the Writ de Ventre inspiciendo. The Form of the Petition for such a Writ. The exact time for the Birth of an Infant. Of the Sheriff's Proceedings in this Writ in the Case of a Widow, and in the Case of a Wife. In what Case the Child may choose his Father. Who shall be said to be a Bastard or not. Who shall be accounted a Bastard though born within Marriage. The signification of Mulier in our Law. Bastardy in what Court to be proved, and why the Ecclesiastical Court cannot proceed to the Trial of Bastardy before they receive Commandment out of the King's Court. The Credit of the Bishop's Certificate in such Case. Where the Trial of Bastardy shall be per Pais, and where by the Ordinary. The difference between general Bastardy and special Bastardy, and where each is to be tried. Bastard by our Law and Mulier by the Civil Law. Bastard by the Spiritual Law and Mulier by the Common Law. What Divorce shall bastardize the Issue. Who only may write to the Bishop to certify Bastardy. Of Bastard eigne and Mulier puisne in case of descent. How Estates may be limited to a Bastard by a reputed Name.

A Writ de Ventre inspiciendo.

THis is a Writ for the searching of a Woman that saith she is with Child, and thereby withholds Lands from him that is next Heir at Law, *Regist. 227. 1 Inst. f. 8.*

A Feme supposed to be enscint at her Husband's Death.

Nota, saith the Register, Quod si quis habens hereditatem, duxerit aliquam in uxorem, & postea moriatur sine herede de corpore suo exeunte, per quod hereditas illa fratri ipsius defuncti discendere debeat, & uxor illa dicat se esse pregnantem de ipso defuncto cum non sit, habet frater & heres ejus breve de Ventre inspiciendo.

The Form of the Petition for such a Writ.

To the Right Honourable, &c. Lord Keeper of the Great Seal of England,

The humble Petition of *A. B.*

Sheweth,

“ That whereas *J. B.* being in his Life time seised in his Demesne as of Fee, of and in certain Lands, &c. in the County of *C.* lately died seised having at the time of his death no Issue of his Body lawfully begotten. And whereas *E.* late Wife and Relict of *J. B.* since the death of the said *J. B.* hath and still doth pretend and give out in Speeches, that she is impregnate by the said *J. B.* to the disherison of your said Petitioner, who is next Kinsman and Heir of the Deceased *J. B.* and to whom the said Lands and Tenements by right of Inheritance do descend, the said *J. B.* dying without Issue of his Body lawfully begotten. And lest the said *E.* out of a design to deprive your Petitioner of his Inheritance impose upon your Petitioner a supposititious Child as Heir of the said *J. B.* deceased declaring the same to be born of her Body after the death of the said *J. B.* to

“ the

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“ the disherison of your Petitioner against Equity
“ and good Conscience, &c.

“ May it please your Lordship to grant to
“ your Petitioner his Majesty's most gracious
“ Writ *de Ventre inspiciendo* to the Sheriff of,
“ &c. directed returnable, &c.
“ And your Petitioner shall ever pray, &c.]

The Lord Keeper ever grants a Day to the Wife
to shew Cause why such Writ may not issue.

The Form of the Writ *Vide Fitz. N. B.*

Bracton saith, If the Feme hath not an Infant
within 40 Weeks after her Husband's Death, or if
she be not found *enseint*, she shall be punished by
Imprisonment and Fine.

But if the Feme hath a Child within the 40 weeks
then such Infant shall have the Heritage, if the other
Heir cannot prove the Infant to be another's, and
not the Husbands.

The exact time for the Birth of an Infant.

It is held amongst Physicians, that by the Rules
of Nature and their Observations in Physick, that
the exact time for the Birth of an Infant is 280
Days from the Conception, *scil.* 9 Months and 10
Days, accounting it *per menses solares*, that is, 30
Days to every Month; but it is natural also if the
Birth be at any time within 10 Months (that is to
say, 40 Weeks) for 10 Months and 40 Weeks are
all one.

And it hath been observed in respect of the many
Infirmities of Women, that no Woman since the
Virgin Mary went her just time, *Sed hoc restat
probandum.*

An Infant was born 40 weeks and 10 days after
the death of the Husband, and was held to be legi-
timate; so it was adjudged in the Case of Dr. An-
drews,

drews, who died of the Plague, 2 *Jac. B. R.* A Man dies 23 *March 8 Jac.* his Wife *priviment enfeint*, which was born 5 *January* after, which was by computation 40 weeks and 10 days after the death of the Husband ; and the Physicians upon conference held that 20 days backwards and 20 days forward doth not take away Legitimation, tho 40 weeks is the *Tempus constitutum*, *Palm. 9. Lit. Rep. 178.* and the Jury found the Issue legitimate.

But by accident an Infant may be born after the 40 weeks, or before; and in the Case of *Dr. Andrews*, he dyed of the Plague, so that he was sick but one day before his death, and the Woman's Father-in-Law used her with great Inhumanity, and caused her to lie in the Streets several nights ; and she was in Travel six weeks before she was delivered, and that she was delivered within 24 hours after she was taken into the House and well used, which was a good Proof of Legitimation ; though it was proved on the other side that she was a lewd woman of her Body : And at the Trial of *Dr. Andrews's* Heir *Dr. Chamberlain*, a Man Midwife, informed the Court upon his Oath, that he had known a woman to be delivered of one Child, and two weeks after to be delivered of another. And *Dr. Paddy* and *Dr. Momford* then affirmed that the Birth is sooner or later according to the Nutriment the Mother had for it.

So in *Alsop's* Case, The Wife after 40 weeks and 8 days was delivered of a Daughter ; by the Doctors it may be legitimate ; for as well *Antenatus* might be Heir in a Child born at the end of 7 months, so a *Postnatus* actually born after 40 weeks ; and they held a Child may be legitimate, though it be born the last day of the 10th month after the Conception, accounting the months *per menses Solares* not *Lunares*, *Godb. 281. 1 Rolls 356. 2 Cro. 571. Alsop and Stacy.*

I shall only cite two Cases more on this Writ of *Ventre inspiciendo*, one was in the Case of a Widow, and the other in the Case of a Feme Covert.

One was in the time of Queen Elizabeth: Sir Francis Willoughby died seized of a great Estate of Inheritance, having five Daughters, leaving Dorothy his Wife, who at the time of his death pretended her self to be with Child by Sir Francis, which if it were a Son all the five Sisters would lose the Inheritance descended to them. They prayed a Writ *de Ventre inspiciendo* out of Chancery, directed to the Sheriff of London, that he should cause the said Dorothy to be viewed by twelve Knights, and to be searched by twelve women in the presence of the twelve Knights, and *ad tractand. per ubera & ad ventrem inspiciend.* whether she was with Child, and to certifie the same into the Common Bench; and if she were with Child, to certifie for how long time in their Judgments, *& quando sit paritura.* Whereupon the Sheriff accordingly caused her to be searched, and returned that she was twenty weeks gone with Child, and that within twenty weeks *fuit paritura.* Whereupon another Writ issued out of the Common Bench commanding the Sheriff safely to keep her in such an House, and that every day he would cause her to be viewed by some of the women named in the writ (ten being named thereon) and some to be present at the Delivery, and to view the Birth whether it were Male or Female; and the Sheriff returned, that such a day she was delivered of a Daughter.

The other was in the time of King James the First, and it was one Thocar's Case, and the like Circumstances and Proceedings were in this Case Pasch. 22 Jac. 1. with this difference. The Lady Willoughby's Case was in the Case of a Widow, but this was in the Case of a Feme Covert, who was married within a week after the death of her first

In case of a Wife.

first Husband, who is supposed to get the Child, for here she was a Feme Covert, and ought to cohabite with her Husband. They did not take such a course as in the Lady Willoughbbies Case, of taking her into the Sheriffs Custody, but left her with her Husband, he entering into a Recognizance that she should not remove from the House where in they inhabited, and that one or two of the women might see her every day, and two or three be present at her Travel; for it was said that this Issue might well be said to be the Child of the first Husband, and should inherit the Land. And after this course observed she was delivered of a Female Child, who was afterwards by Inquisition on Office found to be the Daughter and Heir of the first Husband, *Cro. Jac. 685. and Litt. Rep. 177. Thecar's Case, Winch p. 71.*

In what case
the Child may
choose his
own Father.

Note, It is said in 1 *Inst. f. 8. a.* If a Man hath a Wife and dieth, and in a very short time after the Wife marrieth again, and within nine months hath a Child, so that it may be the Child of the one or the other, that in this case the Child may choose his Father, *Quare, hoc Casu Filiatio non potest probari.*

Who shall be said to be a Bastard or not.

In respect of the months or weeks after the de-
cease of the Husband, *Vide sub Titulo de Ventro
inspiciendo* more fully.

By our Common Law we term them all Ba-
stards, which are born out of lawful Marriage.

If the Husband be within the four Seas (*viz.*)
within the Jurisdiction of the King of England, if
the Wife hath Issue, no proof is to be admitted to
prove that Child a Bastard (for in that Case *Filia-
tio non potest probari*) unless the Husband hath an
ap-

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apparent impossibility of Procreation, as if the Husband be but eight years old, &c. But if the Issue be born within a month or day after Marriage between parties of lawful age the Child is legitimate.

If the Husband be castrate, so that it is apparent that he cannot in any possibility get Issue, if his Wife hath Issue divers years after, this shall be a Bastard although it be begotten within Marriage, because its apparent that it is not legitimate: In the *Starr-Chamber* 14 *Jac. Done and Egerton versus Hinton and Starkey*, by the Lord Chancellor and *Montague*, but *Hobart contra*.

Where Issue shall be a Bastard though born within Marriage.

If a Woman be big with Child by *A.* and after *A.* marries her, and the Issue is born within the Espousals, this is a *Mulier* and not a Bastard. (*Mulier* in our Law signifies *Uxor*, & sic *filius natus vel filia nata ex justa uxore appellatur in legibus Anglie filius mulieratus vel filia mulierata.*)

So if a Wife be big with Child by one, and after another marries her, and after the Issue is born (though but three days after) this is a *Mulier* and no Bastard, because born within the Espousals.

If a Feme Covert hath Issue in Advoutry, yet if the Husband be able to beget a Child, and he is within the four Seas, it is not a Bastard. *Egerton's Case*. So it is if a Woman elope and live in Advoutry with another, but then the Husband must be within the four Seas, so as by intendment he may come to his Wife.

Bastardy.

In what Court to be proved.

If a Suit to prove a Bastardy and Legitimacy be first commenced in the Ecclesiastical Court before any

any Question be moved of such Matter in the Temporal Court of the King a Prohibition lies to restrain such Suit; and if it accompanied with Præiudice and Fraud this is a Misdemeanour punishable in the *Chancery*. And the reason why the Ecclesiastical Judge cannot enquire of Legitimacy or Bastardy before he hath received direction or commandment out of the Temporal Court of the King is, because the Court Christian never had power to intermeddle with Temporal Inheritances *directe* or *indirecte*.

It hath been resolved, that where the Question of Bastardy or Legitimacy hath been moved in the King's Temporal Court, and Issue upon it be joyned there; then it may be transmitted to the Ecclesiastical Court by the King's Writ to be examined and tried there; and upon this the Bishop ought to make a Certificate to the King's Court, which Certificate being made in due manner the Law gives such Credit to it, that all the World shall be estopped and bound by it.

But in an Action on the Case for calling one Bastard, the Defendant justified that he was a Bastard, and it was awarded that this should be tried *per pais*, and not by the Ordinary, *Hob. 179.*

General Bastardy where tryable.
Special where.

General Bastardy ought to be tryed by the Bishop, and not *per Pais*, 18 Ed. 4. 3. a. Special Bastardy *per Pais*. When the Issue is joyned upon Bastardy before it shall be awarded to the Ordinary to be tryed, Proclamation shall be made of it in the same Court, and after the Issue shall be certified into *Chancery* where Proclamation shall be made once a month for three month, and after the Chancellor shall certifie this to the Court where the Plea is depending, and after it shall be proclaimed again in the same Court, that all those whom this Plea doth concern shall go to the Ordinary to make their Allegations, 10 H. 6. c. 11.

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If the Wife of a Man who hath been beyond Sea by so long time before the Birth of the Issue, which the Wife hath in his absence, that the Issue cannot be his Issue, this is a Bastard, *Hill. 14 Jac. 2. in Camera Stellata, Done & Egerton.*

In respect of Marriage unlawful.

If a Man having a Wife takes another Wife, and hath Issue by her, living the first Wife, this Issue is Bastard, for the Second Mariage is void, 7 Co. 44. *Keen's Case.*

If a Man marry his Cousin within the degrees, the Issue between them is no Bastard until a Divorce, for the Marriage is not void, 18 H. 6. 34. b. So it is if the Brother marry his Sister.

If a Man hath Issue by *A.* and afterwards intermarry with her, yet the Issue is a Bastard by our Law, but a *Mulier* by the Civil Law.

An Idiot *a nativitate* may consent to Marriage, and his Issue shall be legitimate, *Trin. 3 Jac. Stile and West, B. R.*

Bastard by our Law, and Mulier by the Civil Law.

If *A.* hath Issue by *B.* and after they intermarry, yet the Issue is a Bastard by our Law, but a *Mulier* by the Civil Law, 11 H. 4. 84.

By the Constitutions of the Pope a Bastard born before the Espousals of the same Parents, who after intermarry, is legitimate; yet it appears by the Statute of *Merton cap. 9.* the King refused to accept such Law in this Realm, and answered to the Motion of it in Parliament, *Nolumus Leges Angliæ mutari.*

If the Parents are divorced *causa Consanguinitatis*, they not having notice of this at the Marriage, the Issues had before are Bastards by our Law, and *Muliers* by the Civil Law.

If

Baron and feme : Or,

If a Man had Issue by a Woman, and after marry the same Woman, the Issue by our Law is a Bastard, and by the Spiritual Law a *Mulier*.

Bastard by the Spiritual Law, and Mulier by our Law.

If a Man marry a Woman big with Child by another, and within three days after she is delivered, in our Law this is a *Mulier*, and in the Spiritual Law a Bastard.

If a Woman elope and hath Issue in Adowtry, the Issue is a *Mulier* in our Law, and by the Spiritual Law a Bastard, 43 E. 3. 19, 20.

But if a Man who hath one Wife takes another, and hath Issue by her, this Issue is a Bastard by both Laws, for the second Marriage is void.

Divorce.

What Divorce shall bastardize the Issue, *Vide Tit. Divorce.*

At what time the Divorce being made shall bastardize the Issue, *Vide Tit. Divorce.*

Jeo oye que il fuit agreed que si un ad issue bastard eign per un feme & puis la feme marrye un auter, & le Baron morust depuis la dit Feme marry a luy per que el ad le bastard & ad issue auter fuz, per luy & le Baron morust que si en ceo case le bastard enter en les terres de queux son pere morust seise & ad Issue & morust, que ceo nest tiel descent que barrera le Mulier a claymer les dis terres, car le maxime tient lieu ou le mariage est prosecut & nemy ou un mariage mean ouesque un estranger. Ex Manuscrip. Mri. Brownloe.

Bastardy

Bastardy where tryable.

General Bastardy or *unq, accouple en Loyal Matrimony* is tryable by the Bishop's Certificate; but special Bastardy, as whether one was born or begotten before the Espousals, or whether a woman be a man's wife or not; or whether she were married to another before: These matters being specially alledged and put in issue it shall be tried *per Pais*, *Hard. 2. 63. Ashfield's Case.*

If Bastardy be pleaded in one, for that he was born of a second wife, living the first, this shall be tryed *per pais*, for the Marriage is void, *38 Aff. 24. adjudged.*

If Issue be, whether a Bastard or a *Mulier*, it shall be tryed by the Ordinary.

But if the Issue be, whether a Bastard or born within the Espousals, it shall be tryed *per Pais*, *7 H. 4. 8.*

So if the Issue be whether born before Marriage, it shall be tryed *per Pais*, for this lies well in the Consistance of the Country, *11 H. 4. 84.*

In an Issue against an Infant, if Bastardy be pleaded in the Infant, this shall not be tryed by the Ordinary, but *per Pais*; because the Infant is not compellable to take Issue upon it, for then he should lose the advantage of the inquiry of Circumstances, and so no Issue shall be joyned upon this; and if Issue be not joyned between the Parties the Ordinary shall not trye it, *30 Aff. 45.*

If Bastardy be pleaded in Abatement of the Writ, and the other saith he is a *Mulier*, this shall be tryed *per Pais*, because it is not peremptory, *49 Aff. 45.*

Who only may write to the Bishop to certifie Bastardy.

Note, None but the King's Courts of Record, as the Court of King's-Bench, Common-Bench, Justices of Gaol-delivery, and such like may write to the Bishop to certifie Bastardy, *Mulieriy*, Loyalty of Matrimony, and such like Ecclesiastical matter; for it is a Rule in Law, *That none but the King can write to a Bishop to certifie*; and therefore no inferior Court, as London, Norwich, York can write to the Bishop; therefore in such Cases the Plea ought to be removed in Banco, and this Court ought to write to the Bishop, and after to remand it again, 1 Inst. 134.

In Affize, if the Tenant saith that *A.* the Father of the Plaintiff took *B.* to Wife, and had Issue the Plaintiff, and after they were divorced, and so the Plaintiff a Bastard. To which the Plaintiff saith, that he is a *Mulier*; upon which a Writ is directed to the Bishop, who certifies that the Plaintiff was born *en loyal Matrimony* without fully certifying that he is fully a *Mulier*; and although the Tenant had acknowledged in his Plea that there was a Marriage, and that the Plaintiff was born in it; yet because if there were a Divorce then this was not a lawful Marriage, the Certificate aforesaid is good which certifies that he was born in lawful Marriage, 4 Aff. 43.

Upon Issue of Bastard or not, if the Ordinary certifie that the Plaintiff was a *Mulier pro ut per Inquisitionem invenit*, this is good without certifying generally *Legitimus*, 3 H. 6. Bastardy 2.

If a Writ issues to the Bishop to certifie if *J.* be a Bastard, if he make a Certificate, yet if he does not remand the writ which comes to him

to warrant the Certificate, it is not good, 41 Aff. 29. adjudged.

If a writ issue to the Archbishop Gardein of the Spiritualties *sede vacante* of the Bishoprick of Coventry and Lichfield, to certifie whether A. was ever *accouple en loyal*, &c. and he returns that Dr. Babington his Commissary of Coventry and Lichfield had enquired, &c. this is not a good Return, because *delegata potestas non potest delegari*; but the Return ought to have been in the name of the Archbishop himself, *Trin. 7 Jac. Foliam's Case*.

If between Strangers another be tried a Bastard *per Pais*, this shall not bind him that is so tryed, because he is a Stranger to the Tryal, and cannot have an Attaint, *Doff. and Stud. 68. b.*

If a man be certified a Bastard by the Ordinary in an Action personal, he shall be bound perpetually, as well as in Actions real, 19 H. 6. 18. b.

If the Defendant be certified a Bastard by the Ordinary, yet the Certificate after shall lose its force, if the Plaintiff be afterwards nonsuited, for then the Certificate is not of Record, 18 Ed. 3. 34.

Of Bastard eigne and Mulier puisne in case of Descents.

A man seized of Lands in Fee, and hath Issue Bastard eigne and Mulier puisne, and dies: if the Bastard enters, and the Mulier dies, his wife *priviment enseint* with a Son, and the Bastard hath Issue, and dies seised, the Son is born, his Right is bound for ever; but if the Bastard dies seised, his wife *enseint* with a Son, the Mulier enters, the Son is born, the Issue of the Bastard is barred; for there must be not only a dying seised, but a descent to his Issue.

Note, That the Case of Bastard *eigne* and *Mulier puisne* differ from the common Cases of Descents and Barr; for Descents do only toll the Entry of him that Right hath, but leaveth him to his Action; but now if a man seised of Lands in Fee hath Issue two Sons, Bastard *eigne* and *Mulier puisne*, and the Father dies, the Bastard enters claiming as Heir to his Father and occupieth the Land all his Life without any Entry made upon him by the *Mulier*, and the Bastard hath Issue and dies seised, and the Land descends to his Issue, who entereth; in this Case the *Mulier* is barred for ever, both of his Entry and of his Action; for the Issue of the Bastard is become in Judgment of Law a lawful Heir: For its the ancient Law, *Iustum non est aliquem post mortem facere Bastardum, qui in tempore vite sue pro legitimo habebatur*, 1 Inf. 224. 8 Co. Lechford's Case.

How Estates may be limited to a Bastard by reputed Name, or not.

If a Remainder is limited to *J. S.* Son of *W. S.* although he be a meer Bastard, and no *Mulier* by the Spiritual Law, yet if he be reputed for his Son, its a good Remainder: But if an Estate for Life be made, the Remainder to the Issue of the Body of *J. S.* or of him begotten on the Body of *A. S.* if he hath afterwards an illegitimate Issue yet this Issue shall never take this Remainder, because he cannot have the Reputation of Issue before his Birth, 1 Inf. 3. b.

If *A.* makes a Feoffment in Fee to the use of himself for Life, the Remainder to the Issue Male of one *Mary Lloyd* of her Body begotten by *A.* the Feoffor; whether he be lawfully begotten or not so that he be the reputed Son of *A.* it is sufficient

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for him to intitle himself to say, that he is the Son of the said *A.* begotten on the Body of the said *Mary Lloyd*, and that he is so reputed in the common Reputation of the Country, although he was not born nor in *esse*, at the time of the Remainder granted; and although there are lawful Issues between them which are *puisne* to the Bastard; for the person who is to take is certainly described; for the Bastard of a woman is certainly known to be her Issue, and this is limited to the eldest Issue, *Mitch. 38 and 39 Eliz. Blodwel and Edwards.*

But though a Bastard be a reputed Son, yet he is not such a Son in consideration whereof an Use can be raised, because in Judgment of Law he is *nullius Filius*, *1 Inst. 123.a.*

By a Devise of all his Goods to his Children a Bastard *eigne* shall take a Portion, *Moor f. 10.*

Note, An *English* Merchant living beyond Seas hath Issue a Son by a woman of that Country, who is an Alien, although by the Civil Law *Partus sequitur ventrem*; yet it is not so in our Law, for the Child shall be of the Fathers condition, for the woman was *sub potestate viri*, *quasi* under the Allegiance of our King.

CHAP. IV.

Queen.

How the Queen is an exempt person from the King in our Law. She is not to find Sureties, nor to be amerced. She is to be sued by a Precept, not by Petition. She may inform by her Attorney in Chancery. Queen Consort or Queen Dowager in case of Treason, how to be tried. The Penalty for any to marry the Queen Dowager without the King's Licence. She is not restrained by the Statute of 1. H. 4. c. 6. She and her Tenants not to pay Toll.

THough the Queen be a Feme Covert and a Subject, yet hath she a Privilege as she is the King's Wife.

The Wife of the King of England is an exempt person from the King, and is capable of Lands and Tenements of the Gift of the King, &c. and may sue and be sued without the King as a Feme sole.

That the Queen as Feme sole may give and take solely without the King, appeareth by an ancient Charter long before the Conquest.

" I Estblish with Queen of the Mercians with Counsel of my Eldermen will give by Grant
 " to Cawolf my most faithful Servant a certain
 " piece of Land, being part of my peculiar
 " power, &c. that he may have and possess
 " at his pleasure as long as he lives; and
 " after his end and limit of his days he may
 " leave it to whomsoever he will for ever
 " lasting Power and perpetual Inheritance
 " And we charge all Secular Powers in the
 " Nan

"Name of God the Father, Son and Holy
 "Ghost, to observe the aforesaid inviolably.
 "These Witnesses subscribing and consenting
 "thereunto, I *Esbeldred* King of the *West*
 "*Saxons*, and *Burghred* King of the *Mer-*
 "*cians*.

When the Queen sueth any Writ the Writ shall not say, if the Queen of *England* shall secure thee, &c. for she ought not to find Sureties, as a common person ought to do; for she shall not be amerced, *Vide Fitz. B. de parco fracto*.

A Protection may be allowed against the Queen, but not against the King; neither shall the Queen be sued by a Petition, but by a *Præcipe*.

The Queen may inform by her Attorney in the *Chancery* by *English* Bill to have a Decree made in the Court of the Queen confirmed; for though the Queen be a Subject, yet hath she a Prerogative with the King as she is his Wife.

Queen Consort or Queen Dowager in case of Treason shall be tried *per pares*, as Queen *Anne*, Wife of King *Henry* the 8th, was, *Pasch.* 22 *H. 8.* in the *Tower* of *London* before the Duke of *Norfolk* then High Steward.

Plenary by six months against the Queen is a good Plea albeit she claims the Advowson by the King's Indowment, 2 *Inst.* 361.

At a Parliament held 6 *H. 6.* it is Enacted, That no man shall contract or marry himself to any Queen of *England* without a special Licence or Assent of the King, on pain to lose all his Goods and Lands, 2 *Inst.* 18.

If a Queen Dowager marry any of the Nobility, or under that Degree, yet loseth not she her Dignity, as *Katharine* Queen Dowager of *England*, married *Owen ap Meredith ap Theodore* Esquire, and yet she by the Name of *Katharine* Queen of

Baron and Feme: Or,

England maintained an Action of *Detinue* against the Bishop of *Carlisle*, 2 *Inst.* 50.

The Queen shall find no Pledges, for she shall not be amerced.

The Queen is not restrained by the Statute of 1 *H. 4. cap. 6.* concerning Grants by the King, 1 *Inst.* 135.

In the Case of a *Quare Impedit* brought by her, Plenarty is no Plea, *Quere.*

The Queen shall pay no Toll.

If the Queens Tenant alien any part of the Tenancy to one, and another part to another, the Queen may distrain any one part for the whole, as the King may do; but other Lords shall distrain *pro rata.*

CHAP. V.

Priviledges of a Feme Covert,

No Mortuary to be paid at her Death. She is not within the Statute of W. 2. cap. 25. What Conditions in Law shall bind the Wife, or not. She may not be a Constable, though the Custom be elected by Houses. Laps shall incur against her. Latchets not to be accounted against her for not Entry or Claim to avoid Descent. What Priviledge the Wife shall have in Suits by reason of the Husband's Priviledge.

IF a Feme Covert dies, no Mortuary shall be paid; but if a Woman survive her Husband, and live in an House for a year sole with the Government of a Family, and after dies, she shall pay a Mortuary,
Linwood

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Linwood f. 7. This was ordained by the Constitution of *Simon Langham*.

The Statute of *W. 2. cap. 25.* a Feme Covert and Infant are not within this Statute to have corporal Imprisonment by punishment by their Plea, by vouching a Record, and failing of it, 2 *Inff.* 414.

What Conditions in Law shall bind a Feme Covert or not.

If Conditions in Law founded upon Skill and Confidence, as Offices of Parkship or Stewardship in Fee, &c. descend to a Feme Covert, if the Condition in Law annexed to them be broken, this shall bar her for ever : But if Feme Covert be Lessee *pur vie*, or Tenant in Dower, and her Husband makes a Feoffment in Fee, and the Lessor enters for the Forfeiture, as he may, yet the Feme after her Husband's death may enter, for this is a Condition in Law without any Skill or Confidence annexed to the Estate, 8 *Co. 44. Whittingham's Case.*

Women in Prison by reason of their Pregnancy have been released upon Bail, *Cro. Jac.* 356.

She is punishable upon a *Malefactoribus in Parcis*, *Hob.* 95, 97.

She is imprisonable for force, *Hob.* 97.

She is punishable within the Statute of 10 *Eliz.* for hearing Mass, and within 23 *Eliz.* for not coming to Church.

A Woman (though the Custom be to elect by Houses) may not be a Constable, *Cro. Car.* 388. *Prouse's Case.*

But Laps shall incur against a Feme Covert if she doth not present within six Months.

Regularly no Laches shall be accounted to Infants or Feme Coverts for not Entry or Claim to avoid descents ; yet Laches shall be accounted to them for Non-performance of a Condition annexed to

Baron and feme : Or,

to the Estate of the Land ; for if a Feme be en-
fcoffed either before or after marriage, reserving a
Rent, and for default of Payment a Re-entry, in this
case the Laches of the Husband shall disherit the
Wife for ever, 1 *Inst.* 246. b.

Privileges in Suits.

If the Husband have Privilege in *Chancery* it
shall not serve for his Wife. P. C. Clark of the
Crown in *Chancery* and his Wife, as Executrix to
her first Husband, were impleaded *in Banco* he
brought a Writ of Priviledge for himself and his
wife, & *non allocatur*, because she is not implead-
able there, nor her attendance requisite.

What Priviledges the Wife shall have by reason of her Husbands Priviledge in Actions.

L. brought Debt against Sir Simon Fanshaw and
his wife, as Executrix of another, and sued to the
Exigent, and at the return of the *Exigent* the De-
fendant, Sir Simon, came into the Court voluntarily
and prayed his Priviledge, because he was an Officer
of the *Exchequer*, & *per Curiam* the Defendant
shall not have his Priviledge, because the Action was
brought against him and his wife *en autre droit*.
Rolls in his Argument of this Case took these dif-
ferences.

Diversities.

1. Where the Defendants are coming to make
their appearance and are arrested, as in 22 *H.* 6. 20.
and where they are sued in one Court and the Hus-
band demands his Priviledge because he is an Officer
in another, as in this Case.

2. Where he is Defendant, and where he is Plain-
tiff.

3. Where

3. Where he is sued in his own right, and where in the right of another, as in this Case. In the first of these differences he shall have his Privilege, in the later not. *Quere*, If the Defendant had not surceased his time in this Case, because he demands his Privilege at the *Exigent*, and not before, *March. Rep. 149. Levett and Sir Simon Fanshaw's Case.*

T. P. a Clerk in *Chancery*, married a Feme, who was Executrix to her Husband, Debt was brought against them in *C. B.* *T. P.* brings a writ of Privilege to have the Action removed into *Chancery*; the writ was disallowed by the Court, and the Defendant ruled to answer over, because the Wife was joyned in the Action with the Husband; *aliter*, where the Wife comes in aid of her Husband to follow the Suit, *Godb. p. 10. Dyer 377. Pole's Case.*

If the Husband be solely impleaded in *Banco*, and he comes with his Wife to the Court to defend the Suit, and both are arrested, there they shall have Privilege.

C H A P. VI.

Who shall be said to be Baron and Feme, or in what Cases Marriage shall be said to be valid or not. 1. In respect of Age : Of the time of Agreement or Disagreement to the Marriage : What shall amount to such Agreement or Disagreement. 2. In respect of Affinity or Consanguinity. What Marriages are within the Levitical Degrees or not ; with several Modern Cases of Precontracts.

In respect of {
 Age.
 Consanguinity.
 Divorce.
 Profession.

1. **A**GE. In former times the Marriage of a Ward made a considerable Title in our Books. I remember *Bracton lib. 2: f. 88.* saith, A Woman being Heir *sine dispositione & assensu Dominorum hæreditatem habens maritari non potest* ; but now the Law is altered, and therefore I shall not trouble the Reader with it ; only let me observe that in case the Lord disparaged the Ward in Marriage under fourteen that then he lost the Wardship. Now there were four Causes of Disparagement then lookt upon.

1. *Propter vitium Animi*, as Idiot.
 2. *Propter vitium Sanguinis*, as 1. A *Villensis*.
 2. A *Burgensis*, i. e. a Mechanick, Habedasher, Draper, &c. 3. The Son or Daughter of a person attainted of Treason or Felony, albeit pardoned, for the Blood is corrupted. 4. A Bastard. 5. An Alien or Child of an Alien.

3. *Propter*

3. *Propter vitium Corporis*, as 1. *De membris*, having one Hand, one Foot, one Eye, &c. 2. A Deformity, as, to squint, be lame, crooked, &c. 3. Privation, as, blind, deaf, dumb, &c. 4. Horrible Diseases, as, Leprosy, Palsie, &c. 5. Natural Impotency to have Children. 6. Deflowred.

4. *Propter jacturam Privilegii*, as, to marry the Heir to a Widow, whereby he should, by reason of the Bigamy, have lost the benefit of his Clergy; but that Bigamy is ousted by the Statute of 1 Ed. 6. cap. 12.

The time of the Agreement or Disagreement to the Marriage, when they marry infra annos nubiles.

The time of Agreement or Disagreement for the Woman is at twelve, or after; and for the Man at fourteen or after, and there needs be no new Marriage if they so agree; but disagree they cannot before the said Ages; but then they may disagree and marry themselves to others without any Divorce, and if once they give consent they can never disagree after, 1 Inst. 79. 2 Co. 16.

If a Man at fourteen marry a Woman at the Age of ten, at her Age of twelve he may disagree, as well as she may, though he were of the Age of Consent; because in Contracts of Matrimony both must be bound, or equal election of Disagreement given to both: So it is *e converso*, if the Woman be of the Age of Consent, and the Man under.

If a Man marry a Woman, who is within the Age of twelve years, and after the Wife disagrees to the Marriage within the Age of twelve years also, and after the Age of twelve years marry with another; now the first Marriage is absolutely defeated so that he may take another Wife; for although the disagreement within the Age of Consent was not sufficient, yet the taking another Husband after the

What a-
mounts to a
Disagreement.

Age

Age of Consent affirms the Disagreement, and so the Marriage is void *ab initio*, as it was adjudged in *Babington's Case*. But if a man marry a woman within the Age of twelve years, and after the wife at eleven years of age disagrees to the marriage, and after the Husband takes another Wife and had Issue by her, this is a Bastard; for the first continues notwithstanding the disagreement of the woman; for she may not disagree within the age of twelve years, and so her disagreement was void, 1 *Roll. Abr.* 341.

A Feme marries with J.S. and within the age of twelve years disagrees and marries with another, the second marriage resolved to be good; for the Church providing against the change of Lust prohibits Divorces, but here under the age of twelve years is not any such mischief, *Per Noy, Banister's Case* cited *Dyer* 13. in *Margine*. And by him marriage by Duress is good, against the Opinion of *Frowick, Palmer* 52. otherwise by such Allegations Divorces would by frequent to satisfy the Lusts of men.

If a man within the age of fourteen takes a wife of twelve, or more, this is a marriage, and they are Baron and Feme *de facto*; so that the husband may have Trespass *de muliere abducta cum bonis viri*, *Tvin.* 12 *Jac. B. R. Bradshaw and Fletcher*. And if the man come to fourteen, and make any continuance of the Action, this shall be a good agreement to the marriage, so as it afterwards shall not be defeated.

If disagreement be before the Ordinary, then they can never after agree to make it a good marriage, though within the age of Consent. *Quere.*

Debt on Obligation by Baron and Feme; the Defendant pleads the Wife had another Husband in full life. The Plaintiff replies, that the Feme *ad annos nobiles* disagreed. The Defendant demurs. The

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The Question was, If he ought to agree or disagree before *annos nobiles*? *Per Popbam*, If she marry another Husband *infra annos nobiles* this shall be a disagreement. But it was adjudged *pro Quer.* because Cohabitation was with the second Husband all the time after the years of Consent, *More 575 Warner & sa Feme against Babington.*

It was a Question, If the death of the Baron before the years of Consent of the Wife doth defeat the marriage *ab initio*, as disagreement shall do, or had dissolved it without disaffirmance; and *per Curiam* it hath dissolved and disaffirmed it; for the Baron dying there is not any marriage, and *Sponsalia* may be before the years of Assent, but not Matrimony, *More 742. Sir Arthur Gorge.*

What Marriages are within Levitical Degrees or not.

IN the Statutes of 25 H. 8. c. 22. and 28 H. 8. c. 7. the Degrees prohibited in the 18th of Leviticus are truly set down, and not only Degrees of Kindred and Consanguinity, but Degrees of Affinity and Alliance are set down, and may be best illustrated and viewed in this Scheme.

Of the Man's Part.

Degrees of Consanguinity prohibited, or a Man may
not marry

his Father's Sister, | his Mother. | his Mother's Sister

||
his Sister.

||
his Daughter.

||
the Daughter of his Son or Daughter.

Of

Of the Woman's Part.

Degrees of Consanguinity, or a Woman may not marry

her Father's Brother. | her Father. | her Mother's Brother.

||
her Brother.

||
her Son.

||
the Son of her Daughter.

On the Man's Part.

Degrees of Affinity prohibited, or a Man may not marry

his Uncle's Wife. | Father's Wife. | Father's Wife's Daughter.

his Brother's Wife. || his Sister's Wife.

||
his Son's Wife, or Wife's Daughter.

||
the Daughter of his Wife's Son or Daughter.

On the Woman's Part.

Degrees of Alliance prohibited, or a Woman may not marry

her Aunt's Husband. her Mother's Husband.

her Sister's Husband. her Husband's Brother.

her Daughter's Husband.

||
the Son of her Husband's Son or Daughter.

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The Act of 13 H. 8. provides for two things : The first was against the dissolution of Marriages consummate with bodily knowledge upon pretence of Precontracts ; the other by reason of other Prohibitions to marry than God's Law requireth : But that Clause about Precontracts is repealed, 2 E. 6. c. 23. 1 Eliz. c. 1. Stat. 15 H. 8. c. 22. 18 H. 8. c. 7. cap. 16. 32 H. 8. cap. 38. are the Statutes which concern Marriage within *Levitical* degrees.

Marriages between Cousin-Germans and all Marriages onwards between Cousin-Germans are by the Statute of 32 H. 8. cap. 38. made lawful.

All Marriages are lawful which are not prohibited within the *Levitical* degrees.

Harrison married his Grandfather's Brother's Wife by the Mother's side, this was held lawful by the Judges, *Vaughan's Rep. &c. Harrison and Numwel*, where you may read excellent Learning about the Common Law's cognifance as to Marriages, and of the Construction of the *Levitical* degrees.

Quæ eandem habent rationem propinquitatis cum Regula. eis quæ nominatim prohibentur : And therefore though the Marriage of the Nephew *cum amita & matertera* is forbidden by the said 18th Chapter of *Leviticus*, and yet the Marriage of the Uncle with the Neece is not by exprefs words prohibited, yet the same is prohibited.

So *Cro. Eliz. 298. Mann's Case.* *Mann* had married his Wife's Sister's Daughter, for which he was sued before the High Commissioners ; for tho' this was not exprefsly forbidden by the *Levitical* degrees, yet because degrees more remote are forbidden, they gave Sentence of Divorce ; and he grounded his Prohibition on the Statute of 32 H. 8. cap. 38. and a Consultation was granted, because the Prohibition is not to be, if it be within the *Levitical* degrees, and here it was, general and therefore not good.

D

In

In *Siderfin* p. 434. *Mich. 21 Car. 2. B. R. Hayward* and his Wife against *Horn*.

It was moved for a Prohibition to the Spiritual Court, and the Suggestion was, that they proceeded there to excommunicate the Plaintiffs, because the Plaintiff *H.* had espoused the other Plaintiff, who was his last Wife's Sister's Daughter, and it was granted, *Vid. More* 907. 2 *Kelw.* 551.

Grotius de Jure Belli lib. 2. f. 137. sect. 12. 13. distinguisheth well that Lineal Parents are only prohibited, not Collateral ascending or descending, and to this the Court inclined.

The Plaintiff sued one in the Ecclesiastical Court for marrying his Sister's Daughter, and the Defendant prayed a Prohibition, because out of the *Levitical* degrees; but it was denied, because it is a Cause of Ecclesiastical Cognizance, *Raym.* 464.

If a man marry his Mother or Sister they are Husband and Wife until a Divorce.

But if a Wife take a second Husband, living the first Husband, this Marriage is void by our Law, as by the Spiritual Law, *contra* 9 *H. 6.* 14.

Whether Marriage be within the *Levitical* Degrees, determinable by the Common Law.

One had married the Widow of his Brother's Son, and the High Commissioners adjudged it Incest. But *per Curiam* this Marriage is lawful, *per Stat.* 32 *H. 8.* and 28 *H. 8.* And this Marriage being within the *Levitical* degrees shall be determined by the Common Law; and so the Judges have taken upon them the Exposition of the *Levitical* degrees by force of the Statute of 32 *H. 8.* as appears by *Person's* Case remembered in *Coke's* Notes, *Entries, Litt. Rep.* 356. *Williams's* Case.

Prohibition was denied to the Ecclesiastical Court in Suit there to dissolve an incestuous Marriage of his Brother's Daughter, *Sir Thomas Jones* 191 *Margatrides* Case. Though the Suggestion was, that Land settled on the said Marriage should be drawn into Question in the Spiritual Court, but

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no Prohibition was granted in *Collet's Case*; for upon such pretence incestuous Marriage may be sheltered, and this matter lies properly in the Spiritual Jurisdiction. The Case was. *Collet's Wife* was the Sister of his former Wife now dead; but upon Information to the Court, that the Suit in the Spiritual Court was only a Contrivance of *Collet* to gain him Power to dispose of the Estate, and *Collet*, the Father at first instance had confessed the prior Marriage, and the Spiritual Court was ready to give Sentence for the Divorce upon his Confession without farther Evidence; The Court proposed there should be a Tryal at Common Law upon a feigned Action, wherein the Issue should be, whether ever *Collet* was married to the Sister of his Wife, which being refused, day was given to shew Cause why the Prohibition should not be granted, and Proceedings to be stayed in the *Interim*, and so from Term to Term, *Sir Thomas Jones's Rep.* 213. *Collet's Case*.

As to Divorce declaring the Marriage to be void, *Vide infra Tit. Divorce.*

As to Profession, that is, when one is regular and professeth under certain Rules, as to become one of the four Orders of Fryars, or a Monk, Canon or Nun; it was held in our Books, that if a Deacon or Priest take a Wife, the Marriage was not void, but voidable by Divorce: But if a Man marries a Nun, or a Monk marieth another woman, the Marriage is void, and the Issues are Bastards, because they were dead persons in Law, and are under a Vow of Chastity, 1 *Inff.* 138. 12 *Co.* 8.

If an Idiot contract Matrimony, this is good and shall bind him, as was judged in *Styles* and *Weeb's Case*, 3 *Jac.* 1. cited in *Siderf. Scot* and *Manbies Case* 112.

Precontract.

Matrimonial
Causes are of
Spiritual Cogni-
sance, and
how.

In Construction of the Civil Law the Wife is *Uxor* before the Espousals by Contract ; for if they have Carnal Copulation after Contract, they shall not be punished for Adultery or Fornication, only for Contempt against an Edict of the Church, which hath prohibited carnal Copulation before the Espousals solemnized *in facie Ecclesie*. If a Legacy be given to a woman *cum uxor fuerit*, and she contract her self, she shall demand the Legacy in the Spiritual Court before the Espousals celebrated, *Mansfield* 170. in *Bunting's Case*.

C H A P. VII.

Tryal of Marriage.

Where and in what Cases Tryal of Marriage shall be by the Bishop's Certificate, and where in Parliament. Of the Issue n'unique accouple en loyal matrimony where to be tryed. If the Issue be, whether she be a Feme Covert or Feme Sole, where to be tryed, and the reason of the difference. The diversity between a Marriage in Right and a Marriage in Possession or de Facto ; and the consequence of the diversity. The Day and Place is omitted in the Bishops Certificate, if good. The Form of the Bishop's Certificate. The Credit the Law gives to it.

Matrimonial Causes are of Spiritual Cognisance as the Right of Marriage, *N'unique accouple en loyal matrimony*, Divorces, 4 Co. *Bunting's Case* 7 Co. 44. And so Bastardy general, but not the

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Consequents or Appurtenants of Marriage, as the Age of Consent shall be tryed at Common Law. So it is said 48 E. 3. 18. All Matters of Marriage are not matrimonial, so as to appertain to the Spiritual Court. And *Fitzb. N. B. 644. a.* takes a difference between Actions for Mony given in Marriage, and given by reason of the Marriage. In the last Case the Spiritual Court shall not have Cognisance, though in the first Case it shall; because it is not matter merely occasioning the Marriage, but as Reward of it, *Sid. 115.*

Where and in what Cases Tryal shall be by the Bishop's Certificate, or in Pais, or not.

The Right of Espousals is evermore triable by the Bishop's Certificate, as if the Issue be *accomple en loyal matrimony* or not; this is tryable by the Bishop, and not *per Pais*, 7 H. 4. 25. 19 H. 6. 18. So if such Issue be in a Writ of Dower it shall be tried by the Bishop; so in an Appeal: But whether a woman be a Feme Covert or Sole is always triable *per Pais*: So if the Issue be Wife or not Wife, married or not married, it is tryable *per Pais*, 7 H. 4. 25.

If a Feme and her Husband bring Trespass, *Nient son feme* shall be tryed *per Pais*: So if Feme Covert bring Assize, as a Feme sole, if the Tenant saith, she is a Feme Covert, it shall be tryed by the Assize. In Assize by Baron and Feme the Tenant saith, that the Wife is the Wife of a Stranger. The Demandant saith, that the Marriage between them was within the Age of Consent, and after at twenty years of Age she took him to Husband, & *issint sa Feme*, and not the Wife of a Stranger; this shall be tryed *per Pais*, 49 Ed. 3. 17. b. *Isabel Goodcheap's Case.*

In a *Cui in vita*, if the Issue be whether the Alienor were her Husband it shall be tryed *per Pais*, for the Action lies if he were her Husband *in facto*.

In a Writ by *W. C.* and *M.* his Wife; if the Issue be whether she were the wife of *W. C.* in Abatement of the Writ, this shall be tryed *per Pais*, 39 E. 3. 16.

Whether a Marriage be solemnized shall be tryed *per Pais*.

In a Writ of Covenant to assure certain Lands within twenty days after the Marriage solemnized between *A.* and *B.* If the Issue be whether there were any such Marriage solemnized or not, this shall be tryed *per Pais*, and not by the Ordinary, *Mich. 4 Jac. B. R. Fletcher and Muffet*.

If *A.* covenant with *B.* that if *B.* marry with the Daughter of *A.* *rite & legitime secundum Leges Ecclesiasticas* he will assure to *B.* a Copyhold Estate. *B.* brought his Action of Covenant, and alledgeth that he *rite & legitime* espoused the Daughter of *A.* upon which Issue was joyned, and found for the Plaintiff. Exception was taken, because it ought to be tryed by Certificate and not *per Pais*: *Sed non allocatur*; for the Marriage is out in Issue, and that is the substance, and not whether he were lawfully espoused; for the Legitimation doth not come in Question; and it was held sufficient for the Plaintiff to alledge a *licet sapius requisitus* without giving notice of the Marriage, for he ought to take notice at his peril, *Cro. Jac. 102. Fletcher and Pynset*.

Whether Coverture or sole shall be tryed *per Pais*, but *encouple en loyal matrimony* by the Bishop, and the reason of the diversity.

If the Issue be whether the Church is void or not void, this shall be tryed *per Pais*; but whether the Church be full or not shall be tryed by Certificate; so if the Issue be whether such a Woman be covert or sole, this shall be tryed *per Pais*, though the Issue whether such a woman was *accouple en loyal matrimony* shall be tryed by Certificate; and the reason of the diversity in both Cases, is this; *Vo-*
dant

dance or not Voidance, a Coverture or Sole are things notorious to the Country, and distinguishable by them; but Pluriarty and loyal Matrimony are not things within their Cognifance: For though a woman lie with a man as her Husband, yet the Country cannot judge whether they are lawfully married or not, *Sid. p. 39. In Watson and Baker's Case.*

So is *Ventris 77.* If Issue be, whether she is the wife of such a man, it is to be tryed *per Pais*; and if she be wife *de facto*, shall be tryed by that Issue; but Loyalty of Matrimony is to be tryed by the Bishop by Certificate.

Trim. 13 Car. 2. B. R. In Debt on a Bond to pay Money at Marriage, *unques accouple* does not draw the Right of Marriage in question. Exception was taken; it is not alledged that the party was married at the time of the Bill, but Issue being joyned upon married or not married, after Verdict this shall be aided, there being a good Negation and Affirmation, *1 Glascock and Morgan.*

Now the difference between a Marriage in Right and a Marriage in Possession is much to be regarded and ought to be carefully attended to in Pleadings.

Marriage in Possession is sufficient always in personal things and causes, especially where the Possession of the Wife is in question: But where the Possession of the Husband is in question there Marriage in Right ought to be; and where Marriage in Possession falls in Averment, there it shall not be tryed by the Bishop, as in the Case of Marriage in Right where *nunq' accouple* is pleaded, but in *Pais*. For in case of a Wife in possession *nunq' accouple* is no Plea, but not his Wife: So is the Case *12 Ed. 3. Br. 481.* A. brought an Action of Trespass against B. and C. B. pleaded that C. is Wife of the Plaintiff, and demanded Judgment of the Writ; the Plaintiff in his Replication said, *nunq' accouple*, and this Replication was not allowed, but he was driven

Diversity between a Marriage in Right and a Marriage in Possession, and the consequence thereof in Pleading.

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to say, Not his Wife; for if C. were the Wife of the Plaintiff in Possession or by Reputation it is sufficient to abate the Writ.

Upon Marriage *de jure infra annos nobiles*, if the Husband be murdered before his Agreement, the Wife shall have an Appeal of Murder, or a Writ of Dower.

Of the Certificate of the Bishop, and the Return.

E. and his Wife demanded her Dower of the Lands of W. S. her former Husband. The Defendant pleads *nung' accouple en loyal Matrimony*. The Issue was, *Quod fuit accouple en loyal matrimony*; thereupon a Writ was awarded to the Bishop, who certified that she was *accoupled in vero matrimonio cum præd. W. sed clandestino, & quod W. & E. thori & mensæ participatione nondum cohabitaverunt usque ad mortem præd. W.* Upon this Certificate Judgment was given for the Demandant. Error assigned was, because there was neither day nor place of the Marriage mentioned in the Bishop's Certificate. *Sed non allocatur*. For the day or place of the Marriage is not material, for it is not issuable, because the Certificate from the Bishop is concluding. 2. It was assigned, that this Certificate is not good, because it doth not answer to the words of the Issue, which was *n'ung' accouple en loyal matrimony*; he ought to have answered, *Quod fuit copulatus in legitimo matrimonio*, but he saith, *Quod vero matrimonio, sed clandestino*, which is but argumentative that they were lawfully married, their cohabiting at Bed and Board: *Sed non allocatur*; for *vero matrimonio* is as good as *legitimo*, and though it be *clandestino* it doth not vitiate the Marriage, and the other words prove they continued as Baron and Feme, Cra

Car. 35.
21.8

In a Writ of Dower, upon an Issue *n'ung, accouple, &c.* if a Writ issue to the Bishop to certify, &c. and he certifies that the Husband being of 11 years, 10 months and 20 days of age, and the Wife of 16 years of age intermarried *in facie Ecclesie*, and so they were *accouple en loyal matrimony*; this is not a good Certificate, because it doth not give a full answer to the Writ, whether they were *accouple en loyal matrimony*, *Dyer 313.*

But if upon such Writ and Issue the Bishop certify that he had made diligent inquisition of the matter, by which he had found by lawful proofs that the Woman at such a place in certain was accoupled in loyal Matrimony to the said Husband mentioned in the Writ; this is a good Certificate although it was objected that he should have certified his proper opinion, and not only the Inquisition, for he had not certified so much as the Writ requires in effect, *Dyer 368.*

The Plaintiff brought a Writ of *rationabili parte bonorum* against the Executors of the Husband, and demands her part of divers Goods in certain. The Defendant pleads, *n'ung, accouple en loyal matrimony*; Upon which a Writ was awarded to the Bishop of *Chester*, in whose Diocess the Wife pleads the Marriage: The Plaintiff, who had the Carriage, delivers it to the Bishop, and prays him to examine it; upon which, and notice given to the Defendant, he did examine divers Witnesses; afterwards the Plaintiff seeing the Bishop inclinable against him, took away the Writ from the Bishop's Secretary. The Defendant takes another Writ without motion in the Court, *Teste* the same Term: Upon which the Bishop, without other Examination and without notice of this Writ to the Plaintiff, returns under his Seal Episcopal *Nung, loyal accouple*; and the Defendant thereupon prayed Judgment. *Per Curiam.* The Writ taken out by the Defendant without motion

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tion was irregular, but by the Preignotaries the irregularity was in defect of notice to the Plaintiff. In this Case the Plaintiff had two Children by the supposed Husband, which were by this Certificate made Bastards, although reputed legitimate before, Sir *Thomas Jones* p. 38.

A Certificate of Marriage by the Bishop is peremptory, the Marriage being at *Utrecht* beyond Sea, and certified under the Seal of the Minister there, and of the said Town, and that they cohabited two years together as Man and Wife, was held a sufficient proof that that they were married, *Cro. Jac.* 542. in *Allop's* Case.

C H A P. VIII.

Marriage, and the Consequence of it by Law.

Where alterations are made by Marriage as to the Names of Dignity; as to change of Name on Estates devised. Where or in what Cases Marriage shall amount to a Countermand or Revocation of Livery or Attornment. If Marriage be a Revocation of a Will or Countermand of Arbitrament. If Marriage be a breach of a Condition by way of Disability. A Lady of a Manor marries a Copyholder, if it be a Suspension. In what Cases Marriage is a Release in Law or not. Woman Jaylor marries a Prisoner, if it be an Escape or not. Where a Term is extinct by the Intermarriage or not. In what Cases the Husband shall be said Assignee of the Wife or not.

What Alterations are made by Intermarriage.

IF a Woman that is noble by descent marry one that is under the degree of Nobility, yet she remaineth noble still; but if she gain her Nobility by Marriage, she loseth it, if she marry under the degree of Nobility; and so is the Rule to be understood, *Si mulier nobilis nupsert ignobili desinit esse nobilis.* But if a Dutcheſs by Marriage marry a Baron of the Realm she remains a Dutcheſs, and loseth not her Name, because her Husband is noble. *Et sic de cæteris.*

As to Names of Dignity.

A Man

As to Devises having changed their Name by Marriage.

A Man had Issue a Son and a Daughter, and devises his Land to his Sons in Tayl, and if he died without Issue, that it should remain to the next of his Name, and died; the Son died without Issue; the Daughter being then married, and the Question was, Whether she should have this Land. *Per Curiam*, she shall not; for she had lost her Name by her Marriage; but it shall go to the next Heir Male of the Name. *Aliter*, If she had not been married; for then she should have had it, for she then was the next of the Name, *Cro. Eliz.* 532. *Bon and Smith*, and so was *Jobson's Case*, *Cro. Eliz.* 576. *Jobson* devised Lands in Tail, the Remainder to the next of his Kin of his Name; and at the time of the Devise the next of his Kin was his Brother's Daughter then married to *J. S.* The Devisor dies, the Tenant in Tail dyed afterwards *sans* Issue, this Daughter shall not have the Land, for she is of her Husband's Name; but if she had been unmarried at the time of the Devise and death of the Donor, though she had been married at the time of the death of the Tenant in Tail without Issue, yet she should have had the Land.

As to alteration of Estates, *Vide Tit.* Moyeties.

As to the Goods and Leases of the Feme, *Vide infra*.

As to the Alteration of Actions, *Vide Tit.* Abatement.

I shall only at present consider

Where and in what Cases Intermarriage shall amount to a Countermand, Revocation, Release, Suspension or Extinguishment.

Livery within the View not revoked by Marriage.

Two Women were Jointenants in Fee, one of them made a Charter of Feoffment to *J. S.* and Livery within the view, and afterwards before it was executed, marries. *Per Curiam*, This Livery

was well executed after the Marriage, for an Interest passeth by the Livery within the view which cannot be countermanded; the effectual part of it, *Go and enter and take possession*, was before the Marriage; though the Estate be in the Wife till Entry, she hath put it in the Feoffor's power, and when he enters it hath a strong Retrospect to the Livery, and shall be pleaded as a Feoffment when she was sole, 1 *Ventr.* 186. *Parsons* and *Pear.*

Pleading.

But a Livery by Letter of Attorney is revoked by Marriage; but Livery within the View is a present Livery.

If *A.* a Feme sole lease for Life or Years, and after grants the Reversion to *B.* and afterwards takes *C.* to Husband, this is a Revocation of the Grant; so that nothing shall pass to *B.* by the Attornment of the Lessee afterwards, because by the Intermarriage *C.* is seised in the Right of his Wife, and had a possibility to be Tenant by the Courtesie, 2 *R.* 2. *Attornment* 8. *Vid.* 4 *Co.* 60. *Force* and *Hembling's* Case. But if *A.* the Feme, after the Grant of the Reversion to *B.* had taken *B.* to Husband, this had not been any Revocation of the Grant, but that the Lessee might have settled the Reversion by Attornment afterwards, because the Husband may not have a better Estate by the Intermarriage than he shall have by the Grant, *Ibid.*

Attornment.

A Woman deviseth Lands to *A.* and his Heirs, Devise. if he survive her, and after she intermarries with the said *A.* It was argued *per Curiam* that by the taking him to Husband and Coverture at the time of her death the Writ is countermanded, it being her own Act, 4 *Co.* 61. *Force* and *Hembling.*

If two Women exchange Lands, and one marries before Entry, this shall not defeat the Exchange.

Exchange.

If *A.* of the one part and *B.* and *C.* a Feme sole of the other part, submit themselves to the Arbitrament

Arbitrament.

Arbitrament

trament of *J. L.* and afterwards *C.* takes *J. S.* to Husband, and after the Arbitrator before any notice of the Marriage makes an Award, that *B.* and *C.* shall pay 30 *l.* to *A.* yet this shall not bind *J. S.* and *C.* his Wife, nor *B.* for for the Submission by the Marriage of *C.* is revoked as to *B.* also, and this also without notice, 1 *Roll. Abr.* 331. *Whin* and *Gifford*. So is *Saccum's Case*, 2 *Keb.* 865. In Debt on Bond to submit to an Award; the Plaintiff on *Oyer* pleads the Intermarriage of the Wife with the Plaintiff before the Award; to which the Defendant demurred. *Per Curiam*: Marriage is her own Act, and was a Revocation of the power given to the Arbitrators.

A Widow binds her self in a Bond conditioned that if the said Obligor from time to time and at all times upon request do such Act and Acts for the conveying of such Mesuage, &c. and for such Estates, &c. The Obligee tenders an Assurance, which was not according to the Condition, but differed in the Limitation of the Estate, and the Obligor refused to accept it. She afterwards married, and the Question was, if the Marriage were a breach of the Condition, she having disabled her self to make a Conveyance, and the Baron is entitled to be Tenant by the Courtesie, and yet it is but a Possibility; and the Court advised the Defendant to make a good Conveyance, *Hardr.* p. 463. *Edwards* and *Owen*.

A Feme sole seised of a Mannor wherein there were Copyholds, one of the Copyholders married with the Feme, the Copyhold is suspended by her Intermarriage, *Godb.* 11. *Cr. Eliz.* p. 7.

If Marriage be a breach of the Condition as to disability.

Copyhold suspended.

What Agreements between the Husband and Wife, stand good or be extinguished by the Marriage.

It is commonly held in our Law-Books, that Agreement between Husband and Wife before Marriage is extinguished by the Marriage, *Hob. 216. Smith and Stafford*, but with this diversity, as was the Case of the Lady *Pridgeon* in *Chancery*. She being a Widow, upon her Marriage with Sir *Francis Pridgeon* suggests an Agreement precedent to the Marriage between him and her, and others on her behalf, that notwithstanding her Marriage, the Rents and Profits of all her own Estate, and what personal Estate and Goods she had should be at her own disposal, but the Executors of Sir *Francis* claimed them: And the Chief Baron *Hales*, who assisted at the Hearing, declared, That though where an Agreement is between Baron and Feme before Marriage, that the Wife may by her Will dispose of part of her Estate, or for a thing which is future to the Marriage, such an Agreement was not dissolved by the Marriage; yet where an Agreement is to have Execution during the Coverture, as was in the Case of the said Lady *Pridgeon*, there the Marriage extinguisheth such an Agreement; and they concluded that the Plaintiff had no ground of Suit, *Cases in Chanc. 117, 118. Smith and Stafford's* Case was upon Speech of Marriage between *A. and S.* he promised, that if she would marry him, and he dyed before her, he would leave her worth 100 *L.* she married him: Now whether the Promise in Law was released by this Marriage was the Question. And it was adjudged contrary to the Opinion of *Herbert*, that it was not released, not being to be performed till after the death of him that made the Promise.

The

The Lady Darcy being a Widow and seised of a Jointure of 700 *l. per annum*, agreed to marry Mr. C. and he before the Marriage agreed with her by Writing, that it should be lawful for her, or such a she should appoint, during the Coverture to receive and dispose of the Rent of her Joynture as she pleased, and the Deed was put into the Hands of *H.* her Agent. They married, and for ten years *H.* received the Rents, and with the approbation of the Lady paid the same to Mr. C. He dyed, the Lady exhibits her Bill to have Account from *H.* and made Title to the same by the Agreement. *Per Curiam.* The Agreement was extinct by the Intermarriage. *Cases in Chancery* 21.

So if Baron and Feme lease at Will the Land of the Wife rendring Rent, and the Husband dies, yet the Lease shall continue, 1 *Inst.* 55. *b.*

Release in
Law.

If Feme Obligee take the Obligor to Husband this is a Release in Law; so it is if two Feme Obligees, and one takes the Debtor to Husband but if the Feme Executrix take the Debtor to Husband, this is no Release in Law, for that would be wrong to the Deed, and in Law work a *Devastavit*, which an Act in Law shall never work 1 *Inst.* 264. *b.*

As to Marriage being a Release in Law of *Assumpsit*, *Vide Hob.* 216. *Smith* and *Stafford*, 2 *Sid.* 58. & *postea.*

Escape.

Intermarriage repeals her Submission to Arbitrament *dum sola*, 3 *Keb.* 9.

Plat's Case Plowd. 17. *a.* If a Woman be Warden of the Fleet, and one that is in prison the marry her he is thereby out of Prison, and the Lord adjudgeth him thereby to be enlarged, because it is repugnant that he as her Husband should have the Custody of her, and she as a Jailor the Custody of him, cited 2 *Ventr.* 19.

Whe

Where a Term is extinguished or not. Where it comes to Husband or Wife, who had the Inheritance.

Lease for years, the Reversion for Life to A. a Feme Covert, and the Lessee grants his Estate to the Husband, and after the Wife dies; the Term is not extinct, because the Husband had the Estate in several Rights, for the Freehold was in the Wife, and the Husband only seized in her Right, 1 *Rol. Abr. Leebden and Winsmore*. So it is adjudged in the *Lady Plat and Sleep's Case*. The Husband has a Term for years in his own Right, and the Inheritance after descends to his Wife, that coming to her *en autre droit* shall not drown and extinguish the Term for years, which he had in his own Right; and so he may assign and dispose of this Term at his own pleasure, notwithstanding the descent of the Inheritance to the Wife, *Cro. Jac. 275. Godb. 20.*

A Lease made to Baron and Feme for years, who enters; the Lessor afterwards enfeoffs the Husband, who died seized; the Feme survives and claims the Term, and the Question was between the Wife and the Heir of the Husband, whether this Term was extinguished. *Et per totam Curiam*, By the acceptance of the Feoffment the Husband had surrendered the Term, and it is extinguished: But if the Conveyance had been by Bargain and Sale enrolled, or by Fine, it had been otherwise, *Cro. Eliz. 912. Downing and Syemor.*

If a Feme lease at Will rendring Rent, and after take Husband, this doth not determine the Lease, but the Baron and Feme shall have an Action for the Rent, 1 *Inst. 55. b.*

So if a Lease be made to a Feme rendring Rent, who takes Husband, this doth not determine the Lease, but an Action lies against them for the Rent or Distress, 1 *Inst.* 55. b.

The Husband
an Assignee
of Contract.

A Debt on Bond against Baron and Feme being made in her Viduity; with Condition that she, her Heirs and Assigns perform all Contracts in a Lease made by her Husband of a Warren to the Plaintiff. She takes another Husband, who entreteth on the Plaintiff. The Agreement found by the Jury. Now there was no Estate alledged in the former Husband in the Right of the Wife, whereby though the second Husband be Assignee in Law, yet he enters as on his own wrong not claiming under her. *Be per Curiam* it is not requisite that the Husband should be Assignee of the Estate, but her Assignee of Contract; She is bound for some intended Interest, though no certain Estate appear, which the Husband hath by Marriage and doth act in her Right 1 *Keb.* 348, 512. *Hall versus Creswell & Unwin*.

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What things of the Wife are given or do accrue to the Husband by the Intermarriage or not. What he gaineth of his Wifes Lands in Fee by the Marriage. What Estate or Interest he gaineth in her Chattels Reals, and Chattels Mixt, which are partly in Possession and partly in Action. What he gaineth in her Chattels Personals, or in Choses in Action. Diversity between Property in Personal Goods and a bare Possession. What things of the Wife the Husband may release or discharge or not, as Obligations, Annuities, Promises, &c. What Acts, Charges or Forfeitures of the Husband shall charge the Wife after his Death, How and wherein the Wife shall be bound by her Husband's Submission to an Award, or for a Rent for Owelty of Partition. How the Husband may charge the Land of the Wife by Rent, Statute, Judgment, &c. What Lands of the Wife shall be put in Execution for the King's Debt upon the Husband. What Act of the Husband amounts to a Forfeiture of the Wife's Land, and for how long. What Acts of the Husband and Wife shall be construed, as the Act of the Wife so as to bind her after his Death or not. For what Acts or Facts of the Wife the Husband shall be punished: Et e contra. Of Paraphernalia. What things or Actions the Wife shall have after the Death of the Husband. What Actions Real, what Things and Actions Personal, as Obligations, Recognisances, Goods, or Money purloined. What things Real, as Rents, Leases, &c. What things the Husband shall have after the Death of the Wife, as Leases in Trust, Arrears of Rents, Pre-

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Sentations, &c. What things the Wife may make good after the Death of the Husband, as Bonds, Rents by Acceptance.

THIS Title is of great use, as will appear by the subsequent Cases, both as to the present profit after Marriage, as for the future advantage after the death either of Husband or Wife.

What the Husband gaineth of Lands in Fee by the Intermarriage.

If a man take to wife a woman seised in Fee of Lands, he gaineth by the Intermarriage an Estate of Freehold in her right, which Estate is sufficient to work a Remitter, and yet the Estate, which the Husband gaineth, dependeth upon an uncertainty, and consisteth in Privy; for if the wife be attainted of Felony the Lord by Escheat shall enter and put out the Husband; otherwise, if the Felony be committed after the Issue had. Also if the Husband be attainted of Felony, the King gaineth no Freehold, but a Pernancy of the Profits during the Coverture, and the Freehold remaineth in the wife, 1 *Inst.* 351. a.

Chattels Real.

As for what Interest the husband hath by the Intermarriage in a Term of years of the wife, and how he may or may not dispose of it, *Vide supra Tit. Disposition of the Wife's Term.*

Chattels Mixt.

Chattels Real being of a mixt Nature (*viz.*) partly in Possession and partly in Action, which happen during the Coverture, the Husband shall have by the Intermarriage, if he survive his wife, albeit he reduceth them not into possession in his life time; but if the wife surviveth she shall have them

them. As if the Husband be seised of a Rent Service charge or seck in the right of his wife, the Rent becomes due during the Coverture; the wife dieth, the husband shall have the Arrearages; but if the wife survive the husband she shall have them, and not the Executors of the husband. So it is of an Advowson, if the Church become void during the Coverture he may have a *Quare Impedit* in his own Name; but the wife shall have it if she survive him: But if the Arrearages had become due, or the Church had fallen void before the Marriage, there they were merely in Action before the Marriage, and therefore he should not have them by the Common Law although he had survived her. So of *Reliefs*. But now by the Statute of 32 H. 8. cap. 37. If the Husband survive the wife, he shall have the Arrearages as well incurred before the Marriage as after, 1 Inst. 351. a.

B. and his wife brought a *Quare Impedit* against H. and made Title to present in the Right of his wife, and after Issue joyned the wife dyed. Per Winch. The Writ is not abated, because this was a Chattel vested in the husband during the Life of the wife, Winch. p. 73. Blunt's Case.

Chattels Personals.

Marriage is an absolute gift of Chattels Personal in Possession in her own Right whether the husband survive the wife or not: But of personal Goods *en autre droit*, as Executrix or Administratrix, &c. the Marriage is no gift of them to the husband, although he survives the wife, 1 Inst. 351. b.

But there is a diversity between Property in personal Goods (as is aforesaid) and a bare Possession, for if personal Goods be bailed to a Feme, or if she finds Goods, or if Goods come to her hands as Executrix to a Bayliff, and she takes husband, this

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base Possession is not given to the Husband, but the Action of Detinue must be brought against the Baron and Feme, 1 *Inst.* 351. b.

Custom of
London.

By the Custom of *London* the wife shall have the Moiety of the Goods whereof her husband died possessed, yet the husband in his Life time may give all the Goods, but by his Will he cannot prejudice her concerning her part, *Cro. Car.* 345.

Monopoly,

Glanvil in his Lecture on the Statute of 1 *Jac. Of Monopolies* 16 Febr. 1629. put this Case. If a Feme sole hath a Patent for the sole using of a Trade invented by her, and after takes husband, yet the husband shall have the advantage of this within the Statute, because he is Assignee in Law.

Chose en Action.

Things in Action, as Debts by Obligation, Contract or otherwise, the husband shall not have them, unless he and his wife recover them. If a Feme Covert be seised of an Advowson, and the Church becomes void, and the wife dies, the Husband shall present; *Aliter*, if a Bond made to the wife, which is merely a *Chose en Action*, 1 *Inst.* 120.

Estray.

If any Estray happen within the Mannor of the wife, if the Husband die before seizure the wife shall have it, for that property was not in the wife before seizure.

Statute.

If a Statute be acknowledged to Baron and Feme they are Joyntenants of it, and the wife shall have all by survivor; so if a Bond be made to Baron and Feme, 4 *E.* 3. 12. b.

Damages.

If Baron and Feme recover Land and Damages the Feme shall have the Execution of the Damages and not the Executors of the husband, 4 *E.* 3. 13.

If Feme sole Obligee takes husband, and the husband makes a Letter of Attorney to J. S. to receive the Monies, who receives it accordingly, and after the

the Wife dies, the Husband shall have Action of Account for the Monies, for by this Receipt it becomes a thing in Possession, *Trin. 13 Eliz. B. R. Huntley and Griffish, More 452.*

If a Legacy be devised to a woman who takes an husband, and the husband makes a Letter of Attorney to *J. S.* to receive the Legacy, and he receives it accordingly, by this Receipt it ceaseth to be a thing in Action and becomes a thing in possession, and the husband or his Executors after the death of the wife shall have account upon this Receipt, *Ibid. More 452.*

A Baron posselt of an Obligation in the Right of the wife may give it to a Stranger, and the Donee may justifie the determining of it after the death of the husband, *Mieb. 38 & 39 El. B. R.*

Bond.

If the wife have Goods and take an Husband, the husband dies, the Executors of the husband shall have the Goods. If the wife lose Goods and take Baron, and the Baron dies, the Executors of the husband shall have these Goods, because the property is in him by the Intermariage notwithstanding the losing. If the Goods of a woman are taken, which woman takes an husband, the Husband alone shall have the *Replevin, Sidersf. 174. Power and Marshal.*

Executor of the Husband to have the Wife's Goods.

Land is devised to a Feme Execatrix during the Minority of *A.* to hold to her own use without account, provided that she keep and educate the said *A.* at School, &c. This such a Term in the Execatrix as is given to the husband upon the Intermariage and the Education and keeping of the Child is not such a particular Privity, but it may be performed effectually by another, *Hob. 285. Balder and Blackburn.*

Term.

An husband submits to an Arbitrament concerning the wife's Term it shall bind the wife, for if the Baron had granted over the Term it should have

Arbitrament.

bound the wife, and by consequence the Submission being for the Interest and Title, of the Term, is as much in effect as if he had granted over the Term, *Dyer 183. in Margine.*

But though the husband doth gain these things by the Intermarriage, yet if he be bound in an Obligation, and the Condition is, that he shall not sell the Apparel of his wife, this is good; as if a man bind himself to a Stranger to pay 20 *l.* per annum to his wife, this is good without doubt by *Coke, Smith and Watson's Case, 1 Rel. Rep 334.*

What the Husband may release or discharge or not.

Covenant.

The Covenant was, that a Stranger should pay 8 *l.* yearly to one of the Covenantees, and to one *F. I.* a Stranger; *F. I.* took husband one *B.* who did release the Payment. *Per Curiam.* *B.* is a Stranger to whose wife the Payment is to be made; now he cannot release this, he having no Right at all therein, nor yet any Remedy to come by it: And Judgment was *pro Quer. 3 Bulstr. 29. Quick and Harris versus Ludborough.*

Annuity.

A widow brought an Annuity against *A.* for 30 *l.* Annuity granted by the Defendant to the Plaintiff by Indenture. To which the Defendant pleads a Release by express words reciting the Annuity made by the husband of the Plaintiff during the Coverture. The Plaintiff demurs; and *per Curiam* the Bar is not good, because the Release of the husband may not extinct the Annuity of the wife, being an Annuity for Life, but that she, if she survive the husband, shall have an Action for it, *Mort 523. Thomson and Butler.*

After Divorce

If husband and wife are divorced *causa adulterii*, yet the husband may after release a Legacy due to the wife, for the Divorce does not divorce *Vinculum Matrimonii*, but a *Mensa & Thoro*, 43 *El. Stephen* and

and *Tatt. Roll. Rep.* But if after such Divorce the wife sues without the husband, as she may for a defamation in the Spiritual Court, and recover, and Penance enjoined, *expensa Litis* taxed, the husband may not discharge this, 14 *Jac. Newton's Case.* Promise.

If *A.* promise *B.* a Feme sole, that in consideration she will marry *C.* his Brother, that he will give *B.* 10 *l.* if she survie *C.* And after *B.* takes *C.* to husband accordingly; *C.* cannot after discharge *A.* of this Promise by his Release to bind *B.* after his decease, because the Promise rests in Contingency during the Life of *C.* the husband, *Hill 6 El. B. R. Balcher and Hudson. Hob. Smith and Stafford's Case.* But expreis words of Promise had released it.

A Legacy of 10 *l.* was bequeathed to a Feme Co- Legacy. vert to be paid eighteen Months after the death of the Devisor. The Testator dies, and after the wife within the eighteen Months dyes, and the Daughter of the wife took Administration. But the Legacy belongs not to the daughter but to the husband, for the husband had an Interest in it before the time of Payment accrued, and he might have released it, 2 *Rolls Rep.* 136.

If the husband be indebted to the King he may Assignment of a Debt due to the wife before Coverture, as a Debt due to *B.* was indebted by a Statute in 2000 *l.* to *C.* who the Wife by the Husband to the King. dying intestate Administration was committed to his wife, who married *Facone*; *Facone* became bound with another to the King in 600 *l.* and he and his wife did assign this Statute by Deed inrolled to the King for the Payment of the said 600 *l.* *Per Curiam*, this Assignment is good notwithstanding the Statute of 7 *Jac. Vide Hob. 253. Breadman and Coles.*

If a Feme be indebted to *J. S.* in a certain Sum Arbitrament. as Administratrix to *J. D.* and she takes an husband, and the husband and *J. S.* submit all matters between them to the Award of *W. M.* he may make an

an Award of this Debt that is due by the Baron and Feme, although it be done in Right of the wife, as as Administratrix, for it is now chargeable by the Intermarriage, 1 *Roll. Abr.* 246. *Cro. Jac.* 447. *Lew. ley and Huston*. So an Arbitrator may make an Award upon such Submission of a Debt to the wife as Executrix, 21 *H.* 7. 29. *b.*

If *A.* and *B.* submit to the Arbitrament of *J.* of all Suits and Actions depending between the two, the Arbitrator may not make an Award of an Action that *B.* and his wife have depending against *A.* for this is out of the Submission, 1 *Roll. Abr.* 246. *Brocas and Scarwage*.

What Acts, Charges or Forfeitures of the Husband shall bind the Wife after his Death.

As for the disposition of the wife's Term, *See infra & supra*.

Attornment.

If the husband attorn to a Grant in *Part* Deed, this shall bind the wife, 9 *Co.* 85. *b.* *Comies Case*.

Legacy released.

A Legacy is given to a Feme Covert, and the husband releaseth, and after he and his wife sue the Court Christian for the Legacy; the party sued shall not have a Prohibition upon the Release of the husband, because the Temporal Judges cannot meddle with the Legacy, and by consequence cannot determine it whether the Release will extinguish it or not, *Telv.* 173.

Rent for Owelty of Partition.

If one Coparcener be married, and for Owelty Partition the husband and wife grant a Rent to the other two out of the part of the Feme Covert, this Partition being equal shall charge the part of the Feme Covert for ever, 1 *Inst.* 196. *b.*

Rent.

If a Baron seized for Life, or in Fee, in Right of his wife grant a Rent and dies, the Feme Covert hold it discharged, for she comes in paramount Estate

Chap.

Charge, so if he be posselt for years in the Right of his wife, and grant a Rent, 9 H. 6. 52.

The husband is seised of Land in the Right of his wife in Fee, and makes a Lease for years of it, and after he and his wife levy a Fine *come ceo*, &c. to J. S. in Fee, and after the husband dies, the Conisee shall hold the Land discharged of the Lease, for the Lease was void by the death of the Husband, for the husband joyned for Conformity and Necessity, and all the Estate passed from the wife, 1 Co. 76. *Bredon's Case*, 2 Co. 77. *Cromwel's Case*.

So if a Baron seised in the Right of his wife in Fee, acknowledge a Statute, or grant a Rent out of the Land, and after he and his wife joyn in a Fee *come ceo*, &c. to J. S. in Fee, and after the husband dies, J. S. shall hold the Land discharged of the Rent, and the Statute for the cause aforesaid, 2 Co. 77. *Cromwel's Case*. So is *Harvy and Thomas's Case*, Cro. Elix. 216. *Harrison* and his wife sold the Land of the wife by Deed indented, but it was not inrolled within the six Months, and afterwards the husband alone makes a Lease by Parol, and then the Baron and Feme levy a Fine to the Bargainee, and dye; the Question was, if the Conisee of the Fine shall avoid this Lease. *Per Curiam*. He shall, for being made by the Baron only, it was void as to the wife, and no Acceptance can make it good; and as it shall be void to the wife so to the Conisee: So of a Rent-Charge granted by the husband, or a Recognisance by him.

So it is of the Grant of a Rent or Statute.

But if Baron and Feme are Joyntenants in Fee, or in Tail, upon a Conveyance made during Coverture, and the husband acknowledge a Statute, and after he and his wife acknowledge a Fine *come ceo*, &c. to J. S. and suffer a Recovery to him, and after the husband dies, yet J. S. shall hold this charged with the Statute, for he comes in of the Estate of the husband as well as the wife, and there are

Aliter, where the Baron and Feme are Joyntenants.

Baron and Feme: Or,

are no Moieties between them, *aliter*, if the Conveyance were made to them before Coverture. If if Baron and Feme are Joyntenants in Fee upon a Conveyance to them made before Marriage, and the husband acknowledgeth a Statute, or grants Rent out of the Land, or lease the Land to another, and after he and his wife levy a *Fine come &c.* to *J. S.* and after the husband dies it seems that *J. S.* shall hold one Moiety discharged by the death of the husband, for the husband hath no power to charge the Moiety of his wife, but during his Life.

Lease for years in right of the Wife not to be extended on Judgment against the Baron. Lands, the years in right of the Wife subject to the King's Debt.

If a Baron possessed in the Right of his wife a Term is condemned in a Judgment, or acknowledgeth a Statute and dies, this shall not be extended on the wife, 9 H. 6. 32. b.

But if the husband be indebted to the King and purchase Lands for years to him and his wife and dies, this Land shall be put in execution for the Debt, for the husband had power to dispose of the said Term, 8 Co. 3, 171. Sir Gerrard Fleetwood 2 Rolls Abr. 157.

If the Cognissee of a Statute dyes Intestate, Administration is granted to his wife, who marries *J. S.* who becomes Debtor to the King, the Chattels which *J. S.* had in Right of his wife as Administratrix shall not be extended for this Debt of the King, for that these Chattels are to pay Debts. Rolls Abr. 159. Buckler and Rayes.

Action brought by a Feme Covert.

2 H. 4. Sir Robert Belknap that Reverend Learned Judge was banished out of the Realm (*legatus in Vasconiam*) not for any defect or offence of his, but by the Might of his potent Enemies and the Malice of the Times; but Sybil Belknap his Lady, continuing in England, she was wronged

and she commenced a Suit in her own Name alone, not naming her husband: Exception being taken against it, because her husband was living; yet notwithstanding it was adjudged good and she recover'd, which made *Markham* say,

*Ecce modo mirum quod fœmina fert Breve Regis
Non nominando virum conjunctum robora Legu.*

And yet it was not any such wonder, that the wife should have an Action or Account as as a Feme sole where the husband is banished by Parliament or abjured (Abjuration is called a Divorce between the husband and wife.) *Weyland* 18 Ed. 1. was exiled, his wife had her Joynture. 10 Ed. 3. The King brought a *Quare Impedit* against the wife of an exiled man. 14 Jac. *Wilmore* brought Trespass by the Name of Widow, her husband living at *Lisbon* in Portugal.

If Baron and Feme sue a Bond made to the wife in C. B. and the Deed is there denied, for which they remain in the keeping of the *Custos Brevium*, and the Baron die, the wife may have a Writ out of *Chancery* directed to the *Custos Brevium* in B. C. that he deliver the Deed of the wife, because the Plea is determined by the death of the husband.

Forfeiture.

A Baron is seized in the right of his wife *per* By Feoffment *in* *vie*, and they make a Feoffment, this is a Forfeiture during the Coverture.

So if Baron sole makes a Feoffment, this is a Forfeiture during the Coverture. But in these Cases it shall not be any Forfeiture against the wife after the death of the husband, 8 Co. 44. *Whittingham's Case*.

But

Term.

But if the husband possess of a Term in the Right of the wife forfeit the Term, this shall bind the wife for that he might dispose of the Term, 7 H. 2. b. 9 H. 6. 2. b.

By acceptance of a *Fine come ceo*, &c.

If Baron and Feme, Lessees for Life, in Right of the wife accept a *Fine come ceo*, &c. of a Stranger, this shall not be any Forfeiture against the wife after the death of the husband, because she was not examined upon this Fine, *Dyer* 148.

Copyhold.

A Copyholder in Fee takes an husband, who makes a Lease for years without Licence, which by the Custom of the Mannor is a Forfeiture; this Forfeiture shall not bind the wife and her heirs after the husband's death, the wife after his death shall have it again, *Cro. Car.* 7. 2 *Rolls* 244, 345. *Sovern* and *Smith*. And *Dodderidge* took this difference. Where a Feme sole is a Copyholder, and she takes an husband, who made a Lease for years without License, the same is a Forfeiture, because it is her Folly that she will take such an husband who will forfeit her Land: But where a Copyhold is granted to a Feme Covert, and the husband makes a Lease without Licence, in such case it is no Forfeiture; and so in the Case of a Feme, Lessee for Life, at the Common Law against *Whittingham* 8 Co. 44. But I find no such difference in *Cro. Car.*

Diversity.

Lapse of time for cutting of Woods shall bind the Wife.

Feoffment in Fee of a Mannor to the use of himself and his wife for Life, the Remainder to his Heirs; and in the Mannor there are Under-Woods usually to be cut every one and twenty years, and the husband suffered the Woods to grow five and twenty years and dies. The Question was, if the husband's suffering it to grow five and twenty years during the Coverture shall bind the wife so as she should not cut the Woods? *Per Curiam*. It shall bind her, for that the time is limited by Law, and if the time be incurred it shall not be felled afterwards, *Godb.* 5. 1 *Brownl.* 73. 1 *Leon.* 61.

If a Man make a Lease for years on Condition that the Lessee his Executors or Assigns shall not alien, there if the wife, Executrix and her second husband alien, this shall be a Forfeiture, for the Condition follows the Estate and is inherent to it, *Dyer* 1. But where the Agreement is collateral and personal, as if a Condition be that a woman shall not beat *J. S.* and she takes an husband who beats him, this shall not be a Forfeiture, for the Condition was annexed to the person of the wife: But the Waste of the husband is the Waste of the wife, for that follows the Estate, and is not personal.

Forfeiture for Alienation.
Forfeiture for Condition.

Baron and Feme are possess of a Term in the Right of his wife, as Executrix to her first husband, and a Stranger pretending Title to it, and the husband submit to Arbitrament in writing for the Interest and Title of the Lease; and the Arbitrators award one part to the Pretender, and the other Moiety to the Baron and Feme. *Quære*, If the Award shall bind the wife after the death of her husband.

Arbitrament.

What Acts done by the Husband and Wife shall be construed as the Act of the Wife or not, so as to bind her after the death of the husband or not.

If Baron and Feme are Patrons *in jure uxoris* if they confirm by Deed the Lease of the Parson, this is not good against the wife and her heirs, but only during the Coverture, for the Deed of the wife is void, *Dyer* 131. 1.

Confirmation.

Baron and Feme, Tenants for Life, joyn in the praying of aid of a Stranger, this shall be no Forfeiture of the Estate of the wife, 15 E. 4. 29. b.

Aid prior.

A Statute Merchant was made by Baron and Feme, and they joyn in a Defeazance, this shall not be the Defeazance of the wife, 48 E. 3. 12.

In

In Cases of
Limitation.

In Cases of Limitation of Estates, as if Limitation be, if a Ring be tendred by a woman that the Land shall remain to her, and she takes an husband and after she and the Husband tender the Ring, this shall be a sufficient Tender, and shall be intended the Act of the wife.

Declaring the
uses of a Fine.

If Baron and Feme joyn in a Fine of the wife's Land, the wife alone without the husband may declare the use of it, *Bekwith's Case*, 2 Co. 27.

Many Acts in *Pais* made by the Baron and Feme shall be intended the Act of the wife, as Agreement to the use of a Fine, which shall bind the wife after the death of the husband.

Rent by Ow-
erly of Parti-
tion.

Baron and Feme grant a Rent for equality of Partition, this shall bind the wife after the death of the husband, for it is her Act as well as the Act of the husband and shall be intended for her benefit. Feoffment of a married woman on condition to reissue, and she with her husband makes the Feoffment, it is good. A woman Lessor *per vie* with her husband attorns upon the Grant of a Reversion it is good and shall bind the wife after the death of the husband.

Condition to
reissue.

Attorn.

Affent of the
Wife to a Re-
vocation.

If an Estate be conveyed with power that the husband with the assent of the wife may revoke, the assent of the wife to such Revocation is good. So if the Proviso be that a married woman without the assent of her husband may make a Revocation of Uses and declare new, this is good, 2 *Brown* 139, 140.

Acknowledg-
ment of a
Deed to be
inrolled.

Where the wife is examined by Writ she shall be bound, otherwise, not, 10 Co. 43. Baron and Feme acknowledge a Deed to be inrolled, this doth not bind her because she is not examined by Writ.

Payment to a
Feme Covert.

Debt on an Arbitration Bond. The Defendant pleaded, the Arbitrator had awarded that the Defendant should pay to the Plaintiff 10 l. and said he had paid it to the Plaintiff's wife, who received it upon

The Law of Husbands and Wives.

65

upon which the Plaintiff did demurr. Judgment *pro Quer.* For payment to her was not good, 1 Leon. 320. *Froud and Batt's Case.*

For what Acts or Torts of the Wife the Husband shall be punished. Et c contra. Vide Tit. *Action,* and Tit. *Waste.*

If a Lease be made to Baron and Feme, and Waste. the Baron doth waste and dyeth, if the wife agree to the Estate she shall be punished for the waste done by her husband; in like manner as if a Stranger had done the waste, after the death of the husband she is in from the Lessor, and if the Action had been brought against the Baron and Feme, the waste should have been *quod fecerunt vastum*, so as it is as well the waste of the wife, as of the husband, 2 Inst. 303.

Paraphernalia.

By our Law the Apparel of the wife is called *Bona Paraphernalia.* The wife by the Common Law ought to have her necessary Apparel for her Body after the death of the husband, and not the Executors of the husband; but she shall not have excessive Apparel.

If the husband deliver to his wife a Piece of Cloth to make a Garment and dies, albeit it was not made into a Garment in the Life of the husband, yet the wife shall have it and not the Executor, inasmuch as it was delivered to her to that intent. But against the Debtee of the husband the wife shall have no more Apparel than is convenient, Mich. 40 & 41 Eliz. *Harwel's Case.*

A Chain of Diamonds and Pearls being worth 370 l. being usually worn by a woman who was the Daughter of an Earl in *Ireland*, and a Baron

F of

Baron and Feme: Or,

of England, and the wife of a Knight and the King's Serjeant at Law, shall be *Bona Paraphernalia*; so that the husband cannot devise them from the wife, *Cro. Car.* 343. the Lord *Hastings* and *Douglass*. *Richardson* and *Crook* thought the wife shall not have them as *Bona Paraphernalia*, because they were not necessary for her, but only convenient: *Jones* and *Berkly* *e contra*: But all agree she shall have her necessary Apparel.

What things or Actions the Wife shall have after the death of the Husband.

What Actions } Real.
What Things } Personal.

The wife shall have Trespass after the death of the husband for Trees cut upon the Land during the Coverture, 18 E. 4. 13. 39 H. 6. 45.

If the husband pull down an House, which he had in right of his wife, and gives the Timber, the wife shall not have an Action for it, after the death of the husband, 43 E. 3. 26. b.

Rose Edmonds brought Trespass against *P.* for putting in his Beasts into her Land 1 *May* continuing *usque January*: On not Guilty, the Plaintiff had Judgment. Error was brought, and Error was reversed, fact was, that *Rose Edmonds* was Covert de Baron the first day of *May*, and so for a week after, and her husband being dead it is gone with his person, and damages were given entirely: *Per Curiam*, 11 Error.

What thing personal. Vide Acceptance.

Bond.

If an Obligation be made to Baron and Feme, the Feme shall have it by Survivor if she will, 4 H. 6. 10 *Car. in Cam. Scaccar.* *Spark* and *Fairman* Case.

So the wife shall have a Recognisance by Survivor, but if Goods are given to Baron and Feme the Feme shall not have them by Survivor, but the Executors.

A Feme Covert purloyned her husbands Goods or Monies purloyned. Money, and put the Money into other men's hands, who therewith buy Lands to her use, if the Heir or Executor of the husband do sue in Equity for Relief, or to have the Land or Money restored, yet denied Relief; for said Egerton Chancellor, he would not relieve the Heir or Executor (nor the Husband himself if he were alive) for he sat not there to relieve Fools or Buzzards, who could not keep their Money from their wives.

Things Real. Vide Acceptance. Vide Rent.

If a Lease for years be made to Baron and Feme Lease for the Feme shall have it by Survivor. years.

If a Feme seised of a Rent service, takes husband, Rent. and after the husband dies, the wife shall have the Arrears incurred during the Coverture, 15 E. 4. 10.

If a Feme make a Lease for Life or Years, reserving Rent, and after takes husband, after the death of the husband the wife shall have the Arrears incurred during the Coverture, and not the Executor of the husband, because this issues out of the Freehold.

If a Rent charge be granted to A. a Feme, and B. for years, and after they intermarry, and after Arrearages incurr, and after the husband dies the wife shall have the residue of the Rent, and also the Arrearages in the Writ of Annuity, for that they participate of the nature of the principal, and the Executor of the husband shall not have the Arrears, Mich. 22 Jac. B. R. Carew and Burgoigne.

What things the Husband shall have after the death of the Wife.

Arrears of
Rent.

If a Feme having a Rent for Life takes an husband, and dies, the husband shall have the Arrears incurred during the Coverture, 10 H. 6. 11, 12, 4 Co. *Ognes's Case* ; but he shall not have the Arrears incurred before the Coverture at Common Law, but by the Statute of 32 H. 8. he shall.

If a Feme make a Lease for years rendring Rent, and afterwards takes husband, and dies, the husband shall have the Arrears incurred during the Coverture, 10 H. 6. 11.

Presentation.

If Baron and Feme in the right of the wife are seised of an Advowson, and the Church is void, and after the Feme dies, yet the husband shall present to this Church, for it cannot be granted over, yet it is not meerly in Action, 1 Inst. 120. But otherwise of a Bond to the wife, as if J. S. becomes bound to a Feme Covert, and she dies, her husband shall not have this Obligation without Administration, for that it is a thing in Action.

Lease for
years.

If the husband be posselt of a Lease for year of Land in the right of the wife, and after the wife dies, the interest of the Lease is presently vested in the husband by Law, and he shall have it and not the Administrator of the wife, *Dier* 151. *Plew.* 192. *Wrotely and Adams*, 1 Inst. 46.

Interest of a
Term by the
performance
of the Condi-
tion.

A Feme posselt of a Lease for years, takes husband, and they joyn in the Grant of a Term upon Condition that if they, their Executors or Administrators pay 10 l. at such a day it shall be lawful for them to re-enter, and after the wife dies the husband pays the 10 l. and enters, and dies, his Executors shall have the Term, and not the Administrator of the wife ; for that the interest of the Term survives to the husband, P. 12 *Jac. B. R. Radford and Young.*

If a Term for years be granted in Trust the Ba- Term in
ron shall not have it, *Per Coke in Waterhouse's Trust.*
Case.

*What things the Wife may make good after the death
of her Husband, or not.*

If a Bond be made to Baron and Feme, the Feme Bond.
may refuse this after the death of the Baron, 4 H. 6. 6.
and by such waiver this is made an Obligation to
the husband only.

If Baron and Feme joyn in a Lease for Life of Lease for Life,
the Land of the wife rendring Rent, the Feme may or Years.
make this good by agreement after the death of her
Baron, and shall have the Rent, 10 H. 6. 4. So of
a Lease for years, *Vide* Lease for one and twenty
years, or three Lives by the Statute, *Infra.*

C H A P. X.

Tenant by the Curtesie.

The Nature of Tenancy by the Curtesie. Of what Estate a Man shall be Tenant by the Curtesie or not. If he shall be Tenant by the Curtesie of an Estate in suspense or not. In what cases the Husband shall be Tenant by the Curtesie, where the Wifes Estate is defeasible by Condition. Four things belong to a Tenant by the Curtesie. What Seisin of the Wife it must be to make the Husband Tenant by the Curtesie. In what Cases a Man shall be Tenant by the Curtesie of a Seisin in Law. How a Man shall be Tenant by the Curtesie in respect of the Issue, and how he must plead the having of Issue.

TENANT by the Curtesie of England is when a Man taketh a wife seised of Lands in Fee-simple or in Fee-Tail general, or seised as Heir in Tail special, and hath Issue Male or Female by the same wife born alive, though the Issue after die or liveth, yet if the wife die, the husband shall hold the Land during his Life by the Law of England.

Of what Estate a Man shall be Tenant by the Curtesie or not.

Regula.

It is laid down as a Rule by Littleton sect. 34. That in every case where a Man taketh a wife seised of such an Estate of Tenements, &c. as the Issue which he hath by his wife may by possibility inherit the same Tenements of such Estate, as the wife hath, as Heir to the wife: In this case after the decease of the wife he shall have the same Tenement.

nements by the Curtesie of *England*, otherwise not. If Lands be given to a woman and to the Heirs Males of her Body, she taketh an husband and hath Issue a Daughter and dyeth, he shall not be Tenant by the Curtesie, because the Daughter by no possibility could inherit the Mothers Estate in the Land; and therefore, if a woman Tenant in Tail general maketh a Feoffment in Fee, and taketh back an Estate in Fee, and take an husband, and hath Issue and the wife dieth, the Issue in a *Formedon* may recover the Land against his Father, because he is to recover the Land by force of the Estate Tail, as Heir to his Mother, and is not inheritable to his Father. If a man taketh a wife seised of Lands and Tenements in Fee and hath Issue, and after the wife is attainted of Felony, so as the Issue cannot inherit to her, yet he shall be Tenant by the Curtesie in respect of the Issue which he had before the Felony, and which by possibility might have inherited; But if the wife had been attainted of Felony before the Issue, albeit he hath Issue afterwards, he shall not be Tenant by the Curtesie.

If an Estate of Freehold in Seigniories, Rents, No Tenancy Commons or such like be suspended a Man shall not by the Curtesie of an Estate suspended. be Tenant by the Curtesie; but if the suspension be but for years, he shall be Tenant by the Curtesie, as if the Tenant make a Lease for Life of the Tenancy to the Seignorefs, who taketh an husband and hath Issue, the wife dyeth, he shall not be Tenant by the Curtesie; but if the Lease had been made but for years, he shall be Tenant by the Curtesie.

If a woman Tenant in Tail general taketh an husband and hath Issue, which Issue dyeth, and the wife dyeth without any other Issue, yet the husband shall be Tenant by the Curtesie, albeit the Estate in Tail be determined, because he was intituled to be Tenant *per Legem Anglia*, before the Estate in Tail was spent, and for that the Land remaineth. But

Baron and Feme: Or,

if a woman make a Gift in Tail, and reserve a Rent to her and her Heirs, and the Donor take husband and hath Issue, and the Donee dies without Issue, the wife dies, the husband shall not be Tenant by the Curtesie, because the Rent newly reserved is by A&T of God determined, and no Estate thereof remaineth *aliter*, if a man seised in Fee of a Rent makes a Gift in Tail general to a woman, &c. 1 *Inst.* 30.

A woman taketh husband and hath Issue, Lands descend to the wife, the husband enters, and after the wife is found an Ideot by Office, the Lands shall be seised by the King; for the Title of the Tenancy by the Curtesie and of the King being at one instant the Title of the King shall be preferred.

A man shall be Tenant by Curtesie of a Castle.

A man shall be Tenant by Curtesie of Common *sans nombre*.

Regula.

A man shall not be Tenant by the Curtesie of a bare Right, Title, Use, or of a Reversion or Remainder expectant upon any Estate of Freehold, unless the particular Estate be determined or ended during the Coverture.

In what Case the Husband shall be Tenant by the Curtesie where the Wifes Estate is defeasable by Condition.

The Mother being seised of certain Lands had Issue two Daughters, and by Indenture covenanted to stand seised to the use of E. her eldest Daughter in Tail, on Condition that the said E. should pay to her other Daughter within a year after the death of the Mother, or within a year after the other Daughter should come to the Age of eighteen years, 300 l. and if E. should fail in the payment of the said Sum, or shall die without Issue before such payment

ment, then to the use of the said second Daughter in Tail. The Mother dies, E. takes husband, hath Issue, and afterwards dies *sans* Issue before the day of payment, the husband shall be Tenant by the Curtesie: For as to the Condition of the payment of the said Sums, the same is not determined, for she died *sans* Issue before the day of payment *viz.* before the second Daughter came of the Age of eighteen years, and as to that there is no Condition broken: And as to the point of dying without Issue the same is not a Condition but rather a Limitation of the Estate, and the same is no more than what the Law saith, and the Estate Tail is spent and determined by dying *sans* Issue, and doth not cease nor is cut off by any Limitation, 1 Leon. 167. *Sams and Pain's Case*.

A Man is entituled to be Tenant by the Curtesie, and maketh a Feoffment in Fee upon Condition, and entreth for the Condition broken, and then his wife dieth, he shall not be Tenant by the Curtesie, because albeit the Estate given by the Feoffment be conditional, yet his Title to be Tenant by the Curtesie was inclusively absolutely extinct by the Feoffment, for the Condition was not annexed to it.

Now four things do belong to an Estate of Tenant by the Curtesie.

1. Marriage.

The Custom of a Mannor was, That if any man taketh to wife any customary Tenant, and hath Issue, and shall over-live his wife, he shall be Tenant by Curtesie, and pleads he took to wife *Anne*, to whom during the Coverture a customary Tenement did descend and had Issue; by this Custom he shall not be Tenant by Curtesie, for *Anne* was not a customary Tenant at the time of the Marriage, 2 Leon. Sir *John Savage's Case*.

2. Seisin

2. Seisin of the wife.

Now there is a twofold Seisin, a Seisin in ^{Deed} Law. And this Seisin of the wife is intended a Seisin in Deed. As if a Man died seised of Lands in Fee-simple or Fee-tail general, and these Lands descend to his Daughter, and she taketh husband and hath Issue, and dies before any Entry, the husband shall not be Tenant by the Curtesie, and yet in this Case she had a Seisin in Law; but if she or her husband had during her Life entred, he should have been Tenant by the Curtesie, 1 *Inst.* f. 29. Except the wife be actually seised, the Heir shall not make himself Heir to the wife; and that is the reason that a Man shall not be Tenant by the Curtesie of a Seisin in Law.

But in some Cases a Man shall be Tenant by the Curtesie of a Seisin in Law; as if a Man seised of an Advowson, or Rent in Fee, hath Issue a Daughter, who is married and hath Issue, and dies seised the wife before the Rent become due, or the Church became void, dyeth, she had but a Seisin in Law, and yet he shall be Tenant by the Curtesie, because he could by no industry attain to any other Seisin, *impotentia excusat Legem*.

The Tenant took the Seignoresse to wife, and had Issue, the wife dyed, the husband shall not be Tenant by Curtesie, for although the Seigniorie was in her at the time of the Marriage, yet by Priority in Law it ceased, so as no Seisin of the Seigniorie was during the Coverture, 1 *E.* 3. 6.

Copyhold.

A Baron shall not be Tenant by the Curtesie of a Copyhold unless there be a Custom to warrant it. *Cro. Eliz.* 361.

3. Issue.

If a Man seised of Lands in Fee hath Issue a Daughter, who taketh husband and hath Issue, the

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Father dies, the husband enters, he shall be Tenant by the Curtesie although the Issue was had before the wife was seised; and so it is, though the Issue had died in the Life time of her Father before any descent of the Land, yet shall he be Tenant by the Curtesie.

If a woman seised of Lands in Fee taketh husband, and by him is big with Child, and in her Travel dies, and the Child is ript out of her Body alive, yet shall he not be Tenant by the Curtesie, because the Child was not born during the Marriage, not in the Life time of the wife, but in the meantime the Land descended, and in Pleading he must alledge that he had Issue during the Marriage. Pleading.

If the Issue be born deaf or dumb, or both, or be born an Idiot, yet it is a lawful Issue to make the husband Tenant by the Curtesie, and to inherit the Land. What shall be said lawful Issue.

And if the Issue be born alive it is sufficient, tho' it be not heard cry, 8 Co. 34. *Pain's Case*. for the crying is but a proof that the Child was born alive, and so is motion, stirring, or the like.

4. Death of the husband.

Yet it is not necessary that these four should concur altogether at one time; and therefore if a Man taketh a woman seised of Land in Fee, and is disseised, and then have Issue, and the wife dye, he shall enter and hold by the Curtesie; so if he hath Issue which dyeth before the descent.

And though the Estate be not consummate till the death of the wife, yet the Estate hath such a beginning after Issue had in the Life of the wife, as is respected by Law for divers purposes; as after Issue had he shall do homage alone; and if after Issue had the husband makes a Feoffment in Fee, and the wife dyeth, the Feoffee shall hold it during the Life of

of the husband, and the Heir of the wife shall not during his Life recover it in a *sur cui in vita*, for it could not be a Forfeiture, for that the Estate at the time of the Feoffment was an Estate of Tenancy by the Curtesie initiate and not consummate.

By Noy in his Lecture it is said to be adjudged 36 Eliz. Feme Tenant in Tail acknowledged the Statute and takes husband, and hath Issue and the Lands may be extended in the hands of Tenant by the Curtesie, and in the hands of the Heir in Tail, if the Tenant by the Curtesie surrenders during the Life of Tenant by the Curtesie, D. 51. b. in margine.

Tenant by the Curtesie grants his Estate with Warranty, and comes in as Vouchee, yet shall be aided of him in the Reversion, Hob. 21,

Pleading.

In Pleading he must alledge he had Issue during the Marriage, and upon that point the Trial is to be had; and upon the Evidence it must be proved that the Issue was alive, for *mortuus exitus non est exitus*: Proofs are crying, motion, stirring, &c.

Es sic seisu' existen' habuer' exitum inter eos quodam A. & postea & antea &c. ead. M. apud prad. obiit, & pradiſ. (Baron) ipsam superius & se tenuit intus in prad. &c. Et fuit inde se seſitus in dominico suo ut de libero tenemento ut tenet inde per legem Angliæ quousque, &c.

C H A P. XI.

Dower.

The Nature of Dower. Qualifications of the Wife to enable her to have Dower. What Divorce shall avoid Dower or not. Of the Endowment of a Wife de facto & de jure. What Seisin the Husband must have to make the Wife dowerable. Of what Seisin of the Husband the Wife shall not be endowed. Of what Estate a Woman shall be endowed. Of what Inheritances entire and not devisable she shall be endowed, and after what manner. In what Cases of Lands or Tenements, which are devisable, and which the Heir of the Husband shall inherit, yet the Wife shall not be endowed. How she shall be endowed of improved Lands. If she shall be endowed of Lands mortgaged. For and in what respect of Disabilities a Woman shall not be endowed. Where the Wife shall lose her Dower by the Attainder of her Husband or not. Whether an Alien Woman shall be endowed, and how. What Act of the Wife shall bar her Dower. Several Cases of Elopement and Divorce relating thereunto. Assignment of Dower, by whom and how to be made. What Assignment of Dower is against common Right or not. What things may be assigned in lieu of Dower. Of Endowment by Meet and Bounds. Assignment of Dower by the Sheriff and how. By the Heir. Assignment in Chancery. Of the Tenant in Dower having Damages what Charges made by the Husband the Wife endowed shall avoid or not. The Writ and Declaration in Dower. Pleadings in Dower. What Pleas are good or not in Bar of Dower.

Tryal,

Baron and Feme: Or,

*Tryal, Evidence, Issue in Dower. Damages
Judgment and Execution of the rationabili
bonorum according to the Custom of London.*

Tenancy in
Dower, what.

W Here a Man is seized of certain Lands or Tenements in Fee Simple or Fee Tail general or as Heir in Tail special, and taketh wife, and dyeth, the wife after her husband's decease shall be endowed of the third part of such Lands or Tenements as were her husband's at any time during the Coverture, whether she has Issue by her husband or not.

*Qualifications of the Wife to enable her to be
Dower.*

She must be of 9 years of Age at the death of her husband, else she shall not be endowed: But if she take a wife 100 years old she shall be endowed. She must not be an Alien, nor one that elopes, *see infra*.

Three things are necessary to the consummation of Dower.

1. Marriage.
2. Seisin.
3. Death of the Husband.

1. Marriage. This must continue during the Coverture, for if that be dissolved Dower ceaseth, and yet this is to be understood when husband and wife are divorced *a vinculo matrimonii*, as in case of Precontract, Consanguinity, Affinity, &c. and not *a Mensa & Thoro*, as for Adultery.

If a Marriage *de facto* be voidable by Divorce in respect of Consanguinity, Precontract, Affinity, &c. yet if the husband dye before Divorce the wife shall be endowed; but if they are divorced *a vinculo matrimonii* in the Life of her husband, she shall

her Dower; *aliter*, if they were divorced *causa adulterii*.

Its to be understood of a wife *de facto*, as well as *de jure* *de facto* and *de jure*.
 years at the time of the death of the husband, she shall be endowed let the husband be of never so young an age. Though the woman cannot consent before 12. nor the man before 14. yet their imperfect in-cobate Marriage, from the which either of the said parties at the age of Consent may disagree, after the death of the husband shall give Dower to the wife; and therefore after the death of the husband it is in Law accounted *legitimum matrimonium quoad dotem*.

If a Man take a wife of the age of 7 years, and after aliens his Land, and after Alienation the wife attains the Age of 9 years, she shall be endowed, for she was conditionally dowable at the time of her Marriage (*viz.*) if she attained the age of 9 years before the death of the husband, 1 *Inst.* 33.

2. Seisin.

The husband must be seised either in Deed or in Law during the Coverture, or else she shall not be endowed, where Lands and Tenements descend to the husband; now before Entry he hath but a Seisin in Law, and yet the wife shall be endowed, albeit it be not reduced to an actual possession, for it lies not in the power of the wife to bring it to an actual Seisin, as the husband may do of the wifes Land when he is to be Tenant by the Curtesie.

Grandfather, Father and Son, and the Grandfather is seised of three Acres of Land in Fee, and taketh wife and dyeth, this Land descendeth to the Father, who dieth either before or after Entry, now is the wife of the Father is dowable: The Father dieth, and the wife of the Grandfather is endowed of one Acre and dyeth, the wife of the Father shall be only endowed

endowed of the two Acres residue ; for the Dower of the Grandmother is paramount the Title of the wife of the Father, and the Seisin of the Father which descended to him (be it in Law or actual) is defeated, and in that case *Dos de dote peti non debet*.

It is not necessary that the Seisin should continue during the Coverture, as the Marriage must ; for albeit the husband aliens the Lands and Tenements, or extinguisheth the Rent, or aliens, &c. the wife shall be endowed.

Of what Seisin the Wife shall not be endowed.

And yet of every Seisin the wife shall not be endowed, as in these Cases following.

The wife shall not be endowed of the Seisin which her husband had by Inter-union on the King's possession.

The woman shall not be endowed both of the Land given in Exchange, and of the Land taken in Exchange, and yet the husband was seised of both ; but she may have her Election to be endowed of which she will.

Of a Seisin for an instant a woman shall not be endowed. If the Conusee of a Fine doth grant and render the Land to the Conusor, the wife of the Conusor shall not be endowed, 1 *Inst.* 31. b.

What Seisin it is that entitles the Wife to her Dower.

1. He must be sole seised thereof and not in Jointenancy ; if there be two Jonytenants in Fee and one makes a Feoffment in Fee, his wife shall not be endowed.

Regula.

2. He must be seised of such an Estate during the Coverture, that the Child that he shall begot the said wife may by possibility inherit the said Lands.

And yet this is not a general Rule. If a Man be Tenant in Fee-Tail general, and maketh a Feoffment in Fee, and taketh back an Estate to him and his wife, and to the Heirs of their two Bodies, and they have Issue, and the wife dies; the husband taketh another wife and dies, the wife shall not be endowed, for during the Coverture he was seised of an Estate Tail special, and yet the Issue, which the second wife might have, by possibility may inherit. The same Law it is, if she had taken back an Estate in Fee-simple, and after had taken wife, and had Issue by her, yet she shall not be endowed, for that the Fee-simple is vanished by the Remitter, and her Issue hath the Land by force of the Entail. But in this Case the Tenant cannot plead that the husband was never seised of such an Estate, whereof the Demandant might be endowed, but he must plead the special matter.

3. Death of the husband; it must be a natural not a civil death.

Note; It is not requisite that Marriage, Seisin and Age concur together all at one time, but it is sufficient if they happen during Coverture.

If a Man seised of Lands in Fee taketh a wife of eight years old, and alieneth his Land, and afterwards the wife attaineth nine years, and then the husband dies, the wife shall be endowed; for though at the time of the Alienation the wife was not dowerable, yet forasmuch as the Marriage and Seisin in Fee was before the Alienation, and the Title of Dower is not consummate till the death of the husband, she shall be endowed.

Broughton and Randal's Case was a little odd. The Title of the wife to recover Dower was, that the Father and Son were Jointenants to them and the Heirs of the Son, and they were both hanged in one Cart; but because the Son, as was deposed

by Witnesses, survived, as appeared by some token
viz. the shaking his Legs, his wife thereupon de-
manded Dower, and had it upon the Issue *ipse
seque quæ Dower*, Cro. Eliz. 502.

Of what Estate a Woman shall be endowed.

Of every Estate of Freehold and Inheritance
Fee-simple, Fee-tail general, or as Heir in Tail
special whereof her husband was seised during the
Coverture either in Deed or Law, except as before.

Of Estate-Tail
determined.

Of an Estate Tail in Lands determined a woman
shall be endowed, in the like manner and form as
a man shall be Tenant by the Courtesie, *mutatis
mutandis*.

Castle.

She shall be endowed of a Castle that is
maintained for the private use and habitation of
the Owner.

Capital Me-
suage.

She shall be endowed of a principal Mansion
Capital Mesuage, *Si non sit caput baron. seu
mansionis*.

Inheritances
entire.

Though by many Inheritances that be
whereof no division can be made by Meets and
Bounds, a woman cannot be endowed of the whole
it self, yet the woman shall be endowed thereof
in a special and a certain manner, as,

Mill.

Of a Mill a woman shall not be endowed
Meets and Bounds, in common with the Heir,
either she may be endowed of the third Toll-dish,
de integro molendino per quamlibet tertium mensuram

In *Gilpin and Cookson's Case* in C. B. was
recuperet tertiam partem molendini, and not of
the third Toll-dish; and it is well enough, the Writ
being of the Inheritance, and not of the profits;
on Recovery of the third part of the Mill she
shall have the Toll-dish, and so is 1 Inst. 32. to be
understood, 2 Keb. 8.

A woman shall be endowed of the third part of the profits of Stallage; of the third part of the profits of a Fair; of a third part of the profits of the Office of the Marshalsea; of the third part of the profits of the keeping a Park; and of a third part of the profits of a Dove-house; and of the third part of the profits of a Piscary (*viz.*) *tertium piscem, vel jactum retis tertium.* Stallage. Fair. Parker-ship. Dovehouse. Piscary.

She shall be endowed of the third Presentation to an Advowson. Third Presen-tation.

She shall be endowed of the third part of the Profits of Courts, Fines, Herriots. Courts. Herriots.

She shall be endowed of Tythes, and the surest Endowment of Tythes is of the third Sheaf, for what Land shall be sown is uncertain. Fines. Tythes.

In some Cases of Lands and Tenements which are devisable, and which the Heir of the husband shall inherit, yet the wife shall not be endowed. As if the husband makes a Lease for Life of certain Lands, reserving a Rent to him and his Heirs, and he taketh wife and dyeth, the wife shall not be endowed; neither of the Reversion, though it be within the word *Tenements*, because there was no Seisin in Deed or in Law of the Freehold; nor of the Rent, because the husband had not but a particular Estate therein, and no Fee-simple. But if the husband make a Lease for years, reserving Rent, and takes wife, the husband dies, the wife shall be endowed of the third part of the Reversion by Meets and Bounds together with the third part of the Rent. Inheritances devisable, what she shall not be endowed of. Seisin.

If a Man makes a Gift in Tail reserving a Rent to him and his Heirs, and after the Donor takes wife and dyeth, the wife shall be endowed of this Rent, because it is a Rent in Fee, and by possibility may continue for ever. Rent.

A woman shall be endowed of a Common certain; but of a Common *sans nombre* in gross, she shall not be endowed. Common.

She shall not be endowed of a Common *sans nombre*, for then the Land should be doubly charged, 11 Co. 45. *Godfrey Pasch. 9 Car. B. R. Prewet and Drake*. Though in that Case in a Writ of Error Judgment was affirmed, because it shall not be intended *Common sans nombre*, but appendant.

She shall be endowed of a Rent-Service, Rent-Charge, Rent-Seck.

Annuity.

Of an Annuity that chargeth only the person, and issueth not out of any Lands or Tenements she shall not be endowed.

Estate suspended.

If the Freehold of the Rents, Common, &c. was suspended before the Coverture, and so continuing the Coverture, she shall not be endowed of them. But if after the Coverture the husband do extinguish them by Release or otherwise, yet she shall be endowed of them; for as to her Dower in the eye of the Law they are to have Continuance.

Land improved.

Of improved Lands she shall be endowed; as if the wife be entitled to have Dower of three Acres of Marsh every one of the value of 12 *d.* and if the Heir by his Industry and Charge makes it grass Meadow, every Acre of the value of 10 *s.* the wife shall have her Dower according to the improved value, and not according to the value, as it was in the husband's time; for her Title is to the quantity of the Land *viz.* one third part. So it is if the Heir improve the Lands by Building.

On the other side, if the value be impaired in the time of the Heir, she shall be endowed according to the value at the time of the Assignment, and not according to the value as it was in the time of the husband.

Of what Estate the Wife shall be endowed.

It is

Its a Rule: In every case where a woman takes an husband's gift of such an Estate in Tenement

Etc. so as by possibility it may happen that the wife may have Issue by her husband, and that the same Issue may by possibility inherit the same Tenements of such an Estate as the husband hath, as Heir to the husband, of such Tenements she shall have her Dower, otherwise not. As if Tenements are given to a Man and the Heirs, which he shall beget on the Body of his wife, in this case the wife has nothing in the Tenements, and the husband hath but an Estate as Donee in special Tail; yet if the husband die without Issue, the same wife shall be endowed of the said Tenements, because the Issue, which she by possibility might have had by the same husband, might have inherited the same Tenements; but if such wife dyeth, living her husband, and after the Baron takes another wife and dies, his second wife shall not be endowed in this case, for the reason aforesaid, *Lit. sect. 53.* And therefore though a woman be 100 years old, and the husband but four years old, and he dies, she shall be endowed, because the Law saith, If she be above nine she shall be endowed.

The wife shall not be endowed of Lands and Tenements, which the husband held jointly with another at the time of his death, for the Joyntenant claims all by Survivorship, which is above the Title of Dower; but Tenants in Common have several Freeholds and Inheritances, and their Moieties shall descend to their several Heirs, and therefore their wives shall be endowed, 1 *Inst.* 37. b.

A Feme shall be twice endowed, as in case of a Recovery by *Eigne Title*, 1 *Roll. Abr.* 684.

If the wife elope she shall be barred of her Dower, Elope, and yet her Issue shall inherit.

If a Man seised in Fee of Land covenant to stand seised of it to the use of himself and his Heirs until C. his younger Son take a wife, and after to the use of C. and his Heirs, and after A. dies, by which the Lands descend to B. his eldest Son, who had a wife

Not of Joyntenancy.

Not of an Estate ended by express Limitation.

wife, and after dies, and after this C. takes a wife, the Question upon a special Verdict was, if the wife of B. the eldest Son, shall be endowed of the said Estate of her husband; and the Court was divided in Opinion. But it seems she shall not be endowed, because his Estate is ended by an exprefs Limitation, and consequently the Estate of the wife being derived out of it shall not continue longer than the original Estate, *Pascb. 10 Jac. B. C. Flavel and Ventrice.*

Note, If Tenant in Fee takes a wife, and makes a Lease for years, and dyeth, the wife shall be endowed, and she shall avoid the Lease, but after her death the Lease shall be in force again, 1 *Inst. 46.*

Dower by Re-
lease.

The Bargainee hath a wife and dies, afterwards the Deed is inrolled, the wife shall have Dower, *Baron Frevil's Case* cited in *Flower and Baldwin's Case, Cro. Car. 217.* For by relation the Bargainee was seised *ab initio, Vide Cro. Jac. 615. Amos's Case.*

Not of a Fee
gained in an
instant.

If Tenant in special Tail take a second wife, who is not dowable of the Tail, and after makes a Fee in Fee and dies, his wife shall not be endowed, for that he gains the Fee but in an instant, 8 *Co. 43.*

The husband ought to have a Fee or Tail in Franktenement in possession; otherwise, the wife is not dowable.

Covenant to
stand seised by
Tenant in
Tail.

The husband of the Demandant and Father of the Tenant being Tenant in Tail, in consideration of a Marriage with his Son, the Tenant in Tail covenanted that the Land after his death should descend and come to his Son and his Heirs, and after he takes the Demandant to wife, it was adjudged he was seised of such Estate, of which she was dowable, for that no Estate was altered by her husband, for he was Tenant in Tail still as before. *Quare,* If it had been a Covenant to stand seised, *See Eliz. Blistman's Case, Vide Moor.*

J. S. seized in Fee by Indenture inrolled bargains and sells to the husband for 120 l. in consideration he shall redemise it to him and his wife for their Lives under a Pepper Corn; and with Condition that if he paid the 120 l. at the end of 20 years, the Bargain and Sale shall be void; he redemiseth it accordingly and dies; his wife brought Dower. *Per Curiam*. Resolved in *Chancery*, that she shall have Dower, and a Court of Equity shall not preclude her of it; and when he redemiseth it upon the former agreement, yet the Lessees are to receive it subject to this Title of Dower, and it was his Folly that he did not joyn another with the Bargainee, as it is the ancient course in Mortgages.

And yet it is held in our Books upon a Mortgage, Land be redeemed, the wife of the Mortgagee shall not have Dower, *Cro. Car. 190. Nash and Preston*.

If an husband takes a Fine *sur Conissance de droit* Instant. come ceo, and renders Arrear; although it was the husbands, yet his wife shall not have Dower, for it is in him and out of him *quasi uno flatu*, and by one and the same Act, 3 *Leon. 11.*

A Man sold his Land upon Condition, and after Condition. took a wife, and died, the Heir entred for the Condition broken, yet the wife shall not be endowed; and so if the Condition had been broken before the death of the husband, if he had not entred; for he had Title of Entry, 1 *Brownl. 59.*

A woman shall be dowable of an Estate granted by Tenant in Tail to her husband and his Heirs, and descendible only for the Life of the Grantor, *1 Sand. 261. in Tooke and Glass's Case.* Of an Estate descendible for the Life of the Grantor.

If a Man seized in Fee makes a Feoffment to divers persons to her use for Life, and to uses which he shall declare by his Will, and after marries, his wife shall not be endowed. *Per Curiam, aliter, if*

Baron is out-
lawed of
High Treason,
and five years
passed after his
death, yet she
shall be en-
dowed.

Uses exprest in his Will bearing date *tali die ante*
the Feoffment, *ex Manuscript. Mri. Brownlor.*

One seised of Lands in Fee took a wife, and levied a Fine of the said Lands with Proclamations, and afterwards was indicted and outlawed of High Treason, and dyed, and five years passed after the death of the husband, and the Heir reversed the Attainder; the Question was in *Vivian Mercurii* Case, whether the wife shall be endowed, 13 Co. 19. And it was resolved that the wife should be endowed; for though a Fine levied and Non-claim of five years shall bar a woman of Dower, and her five years is saved, yet in this case the wife is not to be aided by that saving; for in respect of the Attainder of her husband she had not any right of Dower at the time of his death, nor can she after his death prosecute any Action for it. But the wife is aided by another former saving in the said Act (*viz.*) *As saving to all other persons (viz.) who were parties to the Fine, such Action, Right, Title, Claim and Interest, in or to the said Lands, &c. as first grow, remain, descend or come to them after the said Fine ingrossed and Proclamations made, &c.* So that they take their Actions and pursue their Rights according to Law within five years next after such Action, Right, &c. to them accrued &c. and in this Case the Action and Right of Dower accrued to the wife after the Reversal of the Attainder.

For or in what respect of Disabilities a Woman shall be endowed or not.

The wife of an Idiot, *non compos mentis.*

The wife of one outlawed.

The wife of one attainted of Felony or Treason Herefie, *Præmunire* shall be endowed.

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So note at this day, if the husband be attainted of Felony the wife shall be endowed, and yet the Issue shall not inherit the Lands, which the Father had in Fee-simple, 1 *Inst.* 40. b. But before the Statute of 1 E. 6. the wife should not have been endowed, and the Issue should have inherited.

Where the Wife shall lose her Dower by the Attainder of her husband, and where not.

But the wife is not dowable if the husband be attaint of Treason, for her Title begins by the Intermarriage, and ought to continue and be consummate by the death of the husband, which cannot be in this Case; for the Attainder of the husband hath interrupted it, as in the case of Elopement; and this Attainder is an universal Estoppel and doth not run in Privy between the wife and him to whom the Elcheat belongs; but every Stranger may bar her of her Dower by reason thereof, and a Pardon doth not help her: For now suppose the husband obtaineth a Charter of Pardon and dies, this doth not help the matter, for the same extends but to the Life of the Offender, but doth not take away the Attainder by which she is barred to demand Dower during the Attainder being in force; and so it is though the Lands be aliened before the Treason committed, as it was in *Dyer* 140. b. *Lady Gate's Case*, *Vide Stat.* 5 & 6 Ed. 6. cap. 11. ult. *Provis.* 1 *Leon.* 3. *Mayney's Case*.

If a Man marry an Alien woman she shall be Alien. endowed, 1 *Rolls Abr.* 675. that is to be understood as a Parliamentary Case by Petitioning, and the King's Answer, the Countess of *Arundel's Case*. For if a Man take an Alien to wife, and after the husband aliens the Land, and after she is made a Denizen, and then the husband dies, she shall not be endowed, because there was an absolute disability; *aliter*, if she be naturalized by Act of Parliament.

As to Divorce *Vide supra*. If the wife be divorced *Divorce. causa præcontractus, consanguineis*, or impotency, she shall not be endowed.

If

If the wife elope she is barred of her Dower
Vide infra.

What Act of the Wife shall bar her of her Dower

Elopement.

If the wife elope from her husband, viz. if the wife goeth away and leave her husband, and trieth with the Adulterer, she loseth her Dower and her husband willingly without coercion Ecclesiastical be reconciled to her, and permit her to cohabit with him.

Spon te virum mulier fugiens & adultera facta, Dote sua careat nisi sponsi spon te retracta.

Though in this Case of Elopement the wife can not be barred of her Dower by the Common Law but by the Statute of *W. 2: cap. 34. Si uxor sponte reliquerit virum suum, &c.* If the woman be taken away not *spon te*, but against her Will, and she consent and remain with the Adulterer without being reconciled, &c. she shall lose her Dower.

If the wife go away with her husbands Agreement with *A. B.* and after *A. B.* commits Adultery with her, and she remaineth with him without conciliation, she shall be barred of her Dower.

If she commit Adultery with him, though he doth not continually remain with him, it is a felony trying within this Statute, 2 *Inst.* 436.

If the husband grant his wife with her Goods another, by force of which the wife lives with the Grantee afterwards all the Life of her husband she shall lose her Dower, because she lived in Adultery with him, 30 *E. 1. lib. Parliament. f. 96. William Paynel and Margery his wife.* The President said this:

Elopement

Elopement pleaded in Dower, *Vide Dyer 106. a. 107. a. Parliament. 30 E. 1. apud Westm. Petitio Will. Paynel & Margaretæ uxoris ejus, &c. quod Dominus Rex iis reddere vellet tertiam partem manerii quæ ipsam contingit de libero tenemento Johannis Commoys primi viri sui, &c. Et Nic' Warwick pro Rege plead Elopement de dit feme de sa baron ove le dit Will. Paynel & super hoc prafat. Willielmus Paynel & Margareta protulerunt quoddam factum præd. Johannis Commoys primi viri in hæc verba. Omnibus Christo fidelibus, &c. Sciatis me tradidisse & commississe de spontanea voluntate mea Dom. Willielm. Paynel Milit. Margaret. de Commoys uxorem meam, & etiam dedisse & concessisse & eundem Will' relaxasse & quiete clamasse omnia bona & catalla quæ ipsa Margareta habet vel de cætero habere possit, & etiam quicquid est de prædict. Margaret. bonis & catallis cum pertinentiis fuit. Ita quod nec ego, nec aliquis alius nomine meo in præd. Margaret. bonis & catallis ipsius Margaretæ cum pertin. exigere vel vindicare poterimus nec debemus imperpetuum. Volo & concedo & per præsens scriptum confirmo quod prædicta Margareta cum prædicto Domino Willielmo sit & remaneat pro voluntate ipsius Willielmi. In cujus rei testimonium & his testibus, &c. Et super hoc petit Judicium. Et consideratum est quod prædictus Willielmus & Margareta nihil capiant per petitionem suam sed sint in misericordia. Cest petitio fuit commence Westm. 1. 29 Ed. 1. Et Judicium 30 Ed. 1.*

If the husbands Friends send him away from his wife, so as the wife knows not what is become of him, and they publish that he is dead; and afterwards they procure the woman to release all Marriages and interest in him as an husband; and afterwards by the persuasion of the Friends of the husband

band marries with another, who dies, and she takes another husband, the wife having no notice of the first husbands being alive, although the wife live in Adultery, and though the first husband was married out of the Realm; yet inasmuch as she did not leave her husband *sponte*, as the Statute saith, but by persuation of the husbands Friends, that he was dead; and it did not appear that she knew he was alive, this is not any such Elopement as to bar her of her Dower, 1 *Rolls Abr.* 680. *Green vs. Harvey.*

Fine.

The wife had a Joynture made to her after Marriage, and she and her husband levy a *Fine sur Connaissance de droit*, &c. and alien the Joynture, this shall not be good after the Coverture for her Dower of the Residue of the Lands of her husband, because her time of Election is not come until she comes sole according to the Statute of 27 *H. 8. c. 10.* *Dyer* 358 *b.* 1 *Inst.* 36. *b.* 3 *Co.* 32. *a.*

The husband being Tenant in Tail, the Remainder to his wife for Life; the husband makes a Feoffment to the use of himself and his wife for Life for a Joynture, and dies without Issue; this Joynture was pleaded in Bar of Dower. *Per Curiam.* It is no Bar, because the wife is remitted, and to her first Estate, and the Joynture avoided, *Mors v. Wood and Shirley.*

If the husband seised in Fee makes a Feoffment reserving an 100 Marks Rent yearly for twenty years next ensuing, to him and his wife, and she and the wife accept the Rent, yet this shall not be any Bar in a Writ of Dower, because she demands a Freehold; and that only of a third part, *Temp.* 1 *Ed.* 1. 65.

Of the wives being barred by Fine and Non-claim. *Vide Tit. Fine*, and 13 *Co.* 20.

If Divorce be *causa Consanguinitatis*, *Præcon-* Divorce.
trahtus, *Affinitatis*, *Frigiditatis*, the wife shall not
have Dower.

As concerning Dower at the Common Law,
there must be assignment either by the Sheriff, by the
King's Writ, or by the Heir, or other Tenant of the
Land by consent and agreement between them.

Assignment of Dower.

What persons may assign Dower, or not.

An Infant may assign Dower in *Pais*, because he
is compellable thereto by Writ.

Guardian in Socage may not assign Dower.

If two or more be Joyntenants of Lands, the one Joyntenant.
of them may assign Dower to the Wife of a third
part in certainty, and this shall bind his Companion,
because they were compellable to do the same by
Law; but if one assign a Rent it shall not bind his
Companion.

Assignment may be made by a Disseisor, Abator, By Disseisor.
Intruder, and be good, if there be no Covin, and if
it be not prejudicial to the Disseisee.

It is a general Rule, No Assignment can be made Regula.
but by such as have a Freehold, or against whom a
Writ of Dower doth lie, and therefore Assignment
by a Gurdian in Socage is void; and so by Tenant
by *Elegis*, *Stat'*, or Tenant for years, 1 *Inst.* 34, 35.

There needs no Livery of Seisin or Writing to No Livery
any Assignment of Dower, because it is due of and Seisin.
common Right.

If the husband make several Feoffments of several Dower assign-
parcels, and dies, and the one Feoffee assigns Dower ed by one Fe-
to the wife of parcel of the Land in satisfaction of offment.
all the Dower, which she ought to have in the Lands
of the other Feoffees; the other Feoffees shall take
no

no benefit of this Assignment, because they are Strangers thereto, and cannot plead the same; but in the case if the husband die seised of other Lands in Fee simple, which descend to his Heir, and the Heir endoweth the wife thereof, this is good, and the several Feoffees shall take advantage of it, and void against the Heir; so as there is in this case a Privy between the Heir and the Feoffees, 1 Inst. 35. a.

What Assignment of Dower is against common Right or not.

To assign Dower of an Advowson is against common Right, for she ought to have the third presentation of common Right.

So Assignment of Rent out of Lands is against common Right, 12 Ed. 4. 2.

Assignment of all the Wood or all the Meads in lieu of all the Wood, Meadow, Pasture, and Land is not against common Right. Common Right is a third part of each.

If she be dowable of three Mannors, and she accept of the Heir, one Mannor in Dower, in assistance of all, this is an Endowment against common Right, 18 H. 6. 27.

What things may be assigned in lieu of Dower.

Rent.

A Rent of the same Land may be assigned in lieu of a Dower, and this without Deed.

Rent on Condition.

If a Man assign such Rent on Condition, this is not good; for she ought to have it free without Condition, as she should the Land, 27 El. 1. *Worib's Case.*

Twenty Acres of Corn out of the same Land.

In Dower, the Tenant pleads that he had assigned to the wife in the name of Recompence of Dower twenty Acres of Corn out of the same Land and held a good Bar, as well as a Rent or other Profit.

out of the Land ; *aliter*, if an Horse or Sheep, for this is not of the nature of the Soyl, *Moor* 59.

It is a Rule. Assignment of other Lands where-
of the is not dowable, or of a Rent issuing out of
it, is no Bar of Dower. Regula.
Assignment of
other Lands.

If Dower be assigned on Condition the Condition
is void ; so if Dower be assigned of the Land ex-
cepting the Trees growing upon the Land, this is a
void Exception, for she comes in by her husband, Assignment
with a Condi-
tion or Ex-
ception.

44 *El. B. R. Bullock and Finch, Plowd. Com. Col-
thorpe and Bejushen.*

If Dower be assigned with a Remainder over, this
is a void Remainder, because she comes in by her
husband, and if it should be a good Remainder, it
would be without a particular Estate, *Pl. Com. Col-
thorpe.* Dower assign-
ed with Re-
mainder over.

Indowment by Meets and Bounds.

Albeit of many Inheritances that be intire, where-
of no division can be made by Meets and Bounds, a
woman cannot be endowed of the thing it self ; yet
she shall be endowed thereof in a special manner,
Vide supra.

Note, Endowment by Meets and Bounds accord-
ing to common Right is more beneficial to the
wife, than to be endowed against common Right,
for there she shall hold the Land charged in respect
of a Charge made after her Title of Dower, 1 *Inst.*
32. *b.* As if a Man be seized of three Mannors of
equal value in Fee, and taketh Wife, and chargeth
one of the Mannors with a Rent-charge, and dieth,
she may, by the Provision of the Law, take a third
part of all the Mannors, and hold them discharged ;
but if she will accept the entire Mannor charged, she
shall hold it charged, 1 *Inst.* 171. *a.* Endowment
by Meets and
Bounds more
beneficial for
the Wife.

Note,

Not to be endowed by Meets and Bounds, where the Husband is seised in common.

Note, The husband must be sole seised ; where is seised in common she cannot be endowed by Meets and Bounds, as if there be two Joyntenant Fee, and the one alieneth that which to him belongeth to another in Fee, who taketh wife and dower the wife for her Dower shall have the third part the Moiety, which her husband purchased, to be in common with the Heir of her husband and the other Joyntenant, for here she cannot have Dower assigned by Meets and Bounds ; *aliter* of Joyntnants : For the Joyntenant, which surviveth, dowereth the Land by the Feoffment and survivorship which is above the Title of Dower, and he may plead the Feoffment made to himself without naming his Companion which died ; but Tenants in Common have several Freeholds and Inheritances, and their Moieties shall descend to their several Heirs, therefore their wives shall be endowed.

Assignment of Dower how to be made.

Generally by the Sheriff ; sometimes by the Court by consent ; sometimes in Chancery.

By the Sheriff.

Regula.

Demandant cannot enter or distrain till Execution sued.

It is laid down for a Rule : Wherever the Demandant demands Land, Rent or other thing in certain, Demandant after Judgment may enter or distrain before any Seisin delivered to him by the Sheriff upon a Writ of *Habere fac. Seisinam* ; but where Dower, where the Writ demands nothing in certain, there the Demandant after Judgment cannot enter nor distrain until Execution sued ; by which Execution the Sheriff is to deliver the third part in certainty to the Demandant, 1 *Inst.* 34. b. If a man bring a Writ of Dower of 3 s. Rent, although she ought to be endowed of 1 s. yet she cannot

after Judgment determine 12 d. before Assignment, because the Demand was uncertain.

In Assignment of Dower the Sheriffs Return need not be of such precise Certainty, for it is but the Return of the Sheriff, therefore *Quod habere fecit Seisinam de uno Tenemento sive firma, &c.* and when he saith in the end, that he delivered them all by Meets and Bounds it is sufficient, *Cro. Jac.* 612. Sir Charles Howard's Case.

If the wife accept and enter upon the Sheriffs Assignment lesser Land in quantity than the third of the whole, upon Record, she is barred to demand more, *Moor* 679. in *Longvil's Case*. The Court ordered Amendment of Assignment of Dower being under value, and on refusal of an equal division proffered to him by the Dowager, and committed the Sheriff for taking 60 l. of the Lady to execute his Writ of Execution, and Information against him, *1 Keb.* 743.

In Dower the Demandant recovered Dower of the Tenth of Wool and Lamb, how Execution shall be made is the Question; and the Justices conceived that the Sheriff might deliver the Tenth of every third Yard Land, and assign the Yard Lands in certain, or deliver the third part of all in general; and this Dower the Sheriff may assign without a Jury, *2 Brownl.* 148.

If a woman recover Dower of a Rectory impropriate where there is not any Glebe, the Sheriff shall put her in possession of the third part of the Tithes generally, and not of the Tythes of the Land of the Parish in certain, *Mich. 9 Jac.* in *B.R. per Curiam*.

If a woman be dowable of a Mannor the Sheriff may assign the third part of the Mannor in common in lieu of Dower without setting out by Meets and Bounds.

The Sheriffs Return in Dower.

Barred to demand more than what she accepted upon the Sheriffs Assignment. Assignment of Dower amended.

How Execution to be made of the Tenth of Wool and Lamb.

How to be endowed of a Rectory impropriate where there is no Glebe. Endowment of a Mannor how to be.

By the Heir.

Entry taken
away by De-
scend revived
by Endow-
ment.

An Entry being taken away by Descent is revived by his Indowment; as a Disseisor dies seised, the Heir enter, &c. who endows the wife of the Disseisor of a third part; now presently after the wife entreth and hath the possession of the third part, the Disseeisee may lawfully enter upon the possession of the wife into the same third part, because when the wife is endowed she shall not be by the Heir, but immediately by her husband be the Disseisor, who is in for her Life by a Title amount the dying seised and descent; and the adjudgeth no mean Seisin between the husband and wife, *Lit. sect. 393.*

Acceptance
waves the En-
dowment by
Meets and
Bounds.

If A. seised of Land in Fee takes wife, and deviseth it for one and twenty years to B. and he dies and after C. his Heir assigns to the widow the third part of the Land for her Dower without setting out by Meets and Bounds, and the wife accepts satisfaction of her Dower, although she was bound to accept this so in common without setting it out by Meets and Bounds, for the prejudice might accrew to them to occupy it in common inasmuch as the third part in common is due by Law, and they both consent to accept this according to the Law, they may by their consents waive the Assignment by Meets and Bounds, which is only for their own advantage; and albeit the Lessee for years does not agree to it, yet the Assignment of the tenant of the Freehold shall bind him, *Trin. 11. Cootes and Lambert.*

In Chancery.

Dower may be assigned out of Chancery by a writ *de dote assignanda*; and if it be evicted the Remainder shall be transmitted into Chancery, and there she shall be endowed *de novo*, *Cro. Eliz. 364.*

Dame

Damages.

If a Feme Tenant in Dower sue in a Court of Not to be re-
Equity for Damages, where her husband died not lieved in Equi-
seised, a Court of Equity ought not to relieve her, *ty*.
for it is against the Law.

If the Baron make a Feoffment to the use of him-
self for Life, the Remainder to the Son in Tail.
Per Curiam, This is not such a dying seised of the
husband for the wife to have damages in Dower,
Dame Egerton's Case. But the husband ought to be
seised of an Estate Tail or Fee-simple which may de-
scend to the heir, *Lit. Rep.* 341.

Alienation or death of the Heir after Recovery be-
fore Seisin prevents not Damages, 1 *Keib.* 85, 646,
711.

If Tenant in Dower be disseised, and the Dissei-
sor makes a Feoffment, the Tenant in Dower shall
recover all her Damages against the Feoffee, for she
is not *deins le Statute of Gloucester, c. 1.* by which
every one shall answer for their time, 2 *Brownl.* 41.
Tenant in
Dower not
within the
Statute of
Gloc.

*What Charges made by the Husband the Wife en-
dowed shall avoid, or not.*

Lord of a Copyhold Mannor in which were many Copyhold.
Copyholders for Life takes wife; the Copyholder
dies, the Lord grants this to another and dies, ad-
judged that the wife shall not avoid this Grant in a
Writ of Dower, for that the Custom is before the
Title of Dower, 2 *Co.* 4. *Dyer* 8 *Eliz.* 21. *con-*
tra.

If the wife accept Dower of the Heir against com- Dower against
mon Right she shall hold this subject to the Charges common
her husband, 8 *H.* 6. 27. otherwise, if she be Right.
endowed against common Right by the Sheriff.

Baron and Feme : Or,

If *A.* seized in Tail of a Mannor, to which an Advowson is appendant, grants the next Presentment to *B.* and after marries *C.* and dies, and the wife is endowed of this Mannor with the Appurtenances in lieu of all her Dower, and after the Church is void; *Quere*, if she may present and avoid the Grant made before Coverture.

Writ and Declaration.

Writ of Right of Dower.

Writ of Dower *unde nihil habet.*

Tenant for Life, Reversion in Fee of Lands whereof the Demandant had Title of Dower, and having brought a Writ of Dower against the Tenant for Life, hanging the Writ, he in Reversion levied a Fine with Proclamations of the Reversion, the Tenant for Life dies, five years expire, and the Demandant brought a new Writ against the Tenant for Life, *Hob. 165. Quere.*

In *Fulliam and Harris's Case*: The Writ was *Præcipe A. quod reddat E. Fulliam rationabilem portionem suam de terris, &c. dudum B. Fulliam uxorem suam viri sui: Per Curiam*, The Writ is ill, for it ought to be *Præcipe A. quod reddat E. Fulliam uxorem suam viri sui, &c.* For in the beginning of the Writ she ought to be named *Uxor* of her husband, for that is the name whereby she claims her Dower, *Cro. Jac. 217.*

In Dower the Demand was *de tertia parte messuagiorum &c. in tres partes dividenda*: Judgment was to recover *Seisinam de tertia parte messuagiorum prædictorum cum pertinentiis tenendis in communione per metas & bundas*. It was ill, because they are Tenants in Common, and the Judgment ought to have been *Tenendum in communione*; but had it been divided, *aliter*, *Ex nuper scriptis. Mri. Brownloe.*

Plead

Pleading.

If in a Writ of Dower the Tenant would bar the Demandant by a Joynture made during the Cover-
ture, he ought to say, *Quod intrando agreevit*; for if the wife entreth and agreeth, the same is a good Bar of Dower, 3 Leon. 272.

In Dower the Tenant pleads the Release of the Demandant made to such a Tenant in possession *tenementorum prædictorum*, and because he doth not say he was *tenens liberi tenementi*, it was held to be no Plea, Cro. Jac. 151.

Release of the Demandant.

If one plead an Acquittance or Release in Bar of Dower, he ought to shew that this was for the same cause of Action, 5 H. 7. 1.

A Release of all his Right, &c. to him in the Reversion shall bar the wife of Dower, 8 Co. Alsbam's Case.

N'unique accouple in loyal Matrimony pleaded in London, and Replication to it, and the Record removed into the Common Bench, and Writ to the Bishop, Co. Entr. 180.

N'unique accouple en loyal Matrimony.

In a Writ of Dower sued in any Court of Wales, if they are at Issue upon *n'unique accouple*, &c. the Court there hath not power to make Process to the Bishop, but the King shall write to the Marshal there to amesne the Record here in Banco, and here Process shall be awarded to the Bishop, 19 H. 6. 12.

In Dower against two, if one acknowledge the Action, and the other plead *n'unique accouple*, &c. the Demandant shall not have Judgment against him who acknowledged, until Issue tried, for this goes to the whole, 7 H. 6. 34. So if one acknowledge the Action, and the other plead Assignment of Rent out of the Land, &c. in lieu of Dower, this ought to be tryed before Judgment against the other for the Moiety, for this goes to the whole.

Non-tenure.

Assignment of
Rent out of
the Land
pleaded.

Non-tenure to part or all is a good Plea. In Dower the Defendant pleads Assignment of Rent out of the Land, but because he does not say he was Tertenant at the time of the Rent assigned it was adjudged against him, *Dyer* 361. and so in *Beaumont and Dean's Case*, 2 *Leon.* p. 10. The Defendant pleaded in Bar that he himself before the Writ brought did assign a Rent of 10 *l.* per annum to the Demandant in recompence of her Dower. The Demandant demurs, and for cause shews, because the Tenant had not shewed what Estate he held in the Land at the time of the granting the Rent, as to say, that he was seised in Fee, and granted the said Rent, that it might appear to the Court upon the Plea, that the Tenant had power to grant such a Rent; and the Demurrer was held good.

*Touts temps
priest.*

By the Heir.

The Demandant after the death of her husband enters into the Land in demand, and continues in possession of it five years, and afterwards the Defendant entered, upon which she brought Dower, it was agreed that the Tenant needed not to plead *touts temps priest* after his Re-entry; for the time the Demandant had occupied the same is a sufficient Recompence for the damages, 3 *Leon.* 50. *Riches's Case*.

If a woman bring a Writ of Dower against the Heir, and the Heir comes into Court upon the first summons the first day, and pleads that he hath been always ready, and yet is to render Dower, &c. if his wife have not requested Dower she shall lose her mean values and her damages; but if she have requested her Dower she may plead it, and Issue thereupon may be taken, and a Request *in Pais* is sufficient; And the reason why *Touts temps priest* is a good Plea by the Heir in this Case is to bar her of damages, because the Heir holds by Title, and is in no wrong till demand be made, 1 *Inst.* 32. 33. *a.*

Do

Dower was brought against J. S. J. S. pleads, and Judgment given for the Defendant, and afterwards the Judgment was reversed, and she brought a new Writ of Dower; and the Tenant pleaded he always was ready, and yet is: Against which the Demandant pleaded the first Record to estop the Tenant; the Tenant pleads *Nul tiel record*; *Per Curiam*, the Demandant cannot conclude the Tenant by that Replication to plead *Nul tiel Record*, for the Judgment is reversed, and so no Record, and it cannot be certified as a Record; but if Issue had been taken upon the Plea if the Tenant, *absque hoc* that he was ready, the same might have been given in Evidence against the Tenant, 30 Leon. 50. *Riches's Case*.

Nul tiel Record.

In Dower. If the Tenant shew before the husband had any thing in the Land A. was seised of the same Land in Fee, and let it for years, rendring Rent, and granted the Reversion to the husband of the Plaintiff, who died seised of the said Reversion, and demanded Judgment, if the Demandant shall have Dower, &c. This is no Plea in Bar of Dower, but proves she had Title of Dower; but this saves the Lease for years, and she shall have Judgment only of the Reversion of the Rent, *Winch p. 80.*

Judgment of the Reversion and of the Rent.

N'uncq' seised.

If Tenant in Fee Tail general makes a Feoffment in Fee, and takes back an Estate in Fee-simple, and after had taken wife and had Issue by her, yet she shall not be endowed, for that the Fee-simple is vanisbed by the Remitter, and her Issue hath the Land by force of the Entail; but in this Case the Tenant can never plead that the husband was never seised of such an Estate whereof the Demandant might be endowed, but he must plead the special matter, 1 *Inst.* 31. b.

The Issue was, *N'uncq' seise que Dower*; and *per Curiam* the Tenant shall never give in Evidence a Remitter to defeat the Estate of the husband upon

this Issue, but ought to plead it and shew the Remitter in certain, and that the Issue was of another Estate than the husband had, and then the wife shall be barred; and it is the same Law to say the husband's Estate is defeated by Condition, *Dyer* 41. a.

Sir *J. S.* and *Dorothy* his wife, late wife to Sir *H. Bowyer*, brought Dower against *Barbara Wood* Widow: The Tenant pleaded that Sir *H. Bowyer* was seised in Fee of the Mannor of *W.* and made a Feoffment thereof to the use of himself and *Dorothy*, his wife, for the term of their Lives for her Joynture, the Remainder to one *Bowyer*, and she dyed, and his wife entred and claimed it for her Joynture. *Et hoc paratus, &c.* The Plaintiff replied that before the said Feoffment made that the said Sir *H. Bowyer*, being seised of the said Mannor, did covenant to stand seised thereof to the use of himself in Tail, and for default of such Issue to the use of his wife for Life, and after to Sir *Thomas Henry* in Tail, and afterwards made the Feoffment *prout* and died *sans Issue*, and that she entred claiming by the Indenture of Covenant and was remitted. The Tenant rejoyns, that the said Feme entred after the death of her husband, claiming her Estate for life as Joynture by the said Feoffment, and demands Judgment if she shall against her Claim be remitted. And to this the Plaintiff demurs. It was adjudged that she was *volens nolens* remitted for the benefit of him in Remainder. But *per Curiam*, the Tenant's Plea is ill; for the Tenant ought to have taken a Traverse to the matter alledged in the Replication, and so ill in substance, as it is in *Cra. Ju.* 488. But by *Hobert*, a Plea of Claim by force of the Joynture was pleaded out of time and idle, and requires no Traverse, *Vide Hob. p. 71.* Sir *John Stiles* and *Barbara Wood*.

Remitter.

Plea pleaded
out of time.

Fine with Proclamations, and that she did not claim within five years after the death of the husband, *Co. Entr. 171. Vide supra Tit. Fine.* Fine and Non-claim.

By Attainder of Treason or Petty-Treason the wife shall lose her Dower, and it may be pleaded, *Attainder of Treason.* *5 Ed. 6. cap. 11.* Not so of Murder or Felony.

Elopement by the Demandant is a good Plea in Bar, *Vide supra.* Elopement.

In Dower to say, that the husband had not but an Estate for Life is no Plea, for this is but the general Issue, *10 H. 6. 17.* General Issue.

If a Divorce be *a vinculo matrimonij*, this is a good Bar. Divorce.

It is a good Plea that the wife was not 9 years old at the time of the death of the husband. That the wife is an Alien is a good Plea. That the Wife was not nine years old at his death.

If an Estate be made to the wife before Coverture (or after, if after the death of her husband she enter and agree to it) for term of her own Life, or a greater Estate, this is a Bar, if it be exprest to be for a Joynture, or it may be averred, *4 Co. 1. Vernon's Case. 1 Inst. 36. Co. Entr. 171.* Alien. Joynture.

In a *Scire Fac'* to execute a Recovery in Dower, Acceptance it is no Plea to say that the Demandant accepted a Rent after Judgment out of other Land; but the Heir &c. may assign to the wife parcel of the Land, or a Rent by parcel out of the same Land in full satisfaction of her Dower; and if she bring a Writ of Dower against the other, he may vouch the Heir who shall plead this. Heir vouched.

Detainment of Charters pleaded.

Detainment of Charters concerning the same Lands whereof she claims Dower is a good Plea in delay of her Dower, *11 H. 4. 3. b.*

If detainment of Charters be pleaded in delay of Dower, he who pleads this ought to alledge what Charters they are, as certainly as in a Count, or to continue of them, 14 H. 6. 4.

In Dower against the Froffee of the husband to continue of Charters is no Plea; it is no Plea, but for Heir, *Hob. 113.*

Demand of Lands in *A. B.* against the Heir. The Tenant pleads *N'unque seisia que Dower.* The Jury find the husband was seised during the Covensent of *de omnibus tenementis infra script. praterquam in Tenements in, &c. sicut prae d. M. dotari poterit. Curiam.* The *Praterquam* is idle, and Surplusage, and the Seisin of Land in *A. and B.* is confessed, and the Jury have assessed damage, and therefore the Plaintiff being seised is not found by the Verdict; but the Plaintiff may pray Judgment of the Land and release damages; or the Demandant may aver that the husband dyed seised, and have a Writ to enforce of the damages, 1 Leon. 37. *Butler and Aires.*

Release Damages.

Return of the Sheriff upon a Recovery by default.

In a Writ of Dower, if the Plaintiff recover by default, and upon this a Writ is awarded to the Sheriff or Bailiff where the Recovery is to be made to the Plaintiff *tertiam partem per metas*, and to enquire of the value by the year, and how much time is passed after the first demand of the Dower, and what damages she has suffered. And upon this the Sheriff returns, that he had delivered the third part of the Lands, and that two years are passed after the first demand, and damages 50 l. and accordingly Judgment is given to hold in severalty and to recover damages. Though the Judgment is as good as to the damages inasmuch as it is not averred that the husband of the Plaintiff dyed seised, nor is it so found by the Jury; so as the Judgment is erroneous, yet it shall be reversed only as to this, 1 Abr. 776. *Tye and Atkins.*

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Veru

The Tenant in Dower vouched the Son to Warranty, as Son and Heir to the husband of the Demandant, who appeared and entred into the Warranty *gratis*, and he pleaded he had nothing by descent from his Father: Upon which Plea the Tenant and Vouchee were at Issue, and the Demandant had Judgment against the Tenant to recover, but *cesset Executio* till the Voucher is determined; after that, before the day of *Nisi Prius*, the Vouchee dyed, and at the day the Tenant lost by default, and the Demandant prays to have a Writ of Seisin, *Wincb p. 88, 89.*

In a Writ of Dower brought by a woman of a Gavelkind, third part. The Tenant pleaded that the Lands of which Dower is demanded are in nature of Gavelkind; and that the Custom of such Land is, that Dower ought to be demanded of a Moiety. The Demandant demurs, and by the Justices she may demand Dower of a third part, or by Custom, but *Quere*, for it has been adjudged contrary, 1 *Leon. 62.* The Custom is, that the wife ought to be endowed of the Moyety of such Land *quamdin non maritata remanserit & non aliter.* Judgment against the Demandant. 1 *Leon. 133. Hunt and Gilborn.*

Trial. Evidence. Issue.

If the Tenant plead that the husband is alive, this shall be tried by the Justices by Proofs before them for greater Expedition, *Vid. Precedent, Rast. Entr. 228. 2 Inst. 80. 8 H. 6. 23.* That the husband is alive, how to be tryed.

In Dower, if the Defendant by his Plea acknowledges that the Baron was seised *Que Dower, &c.* And Issue is taken upon an immaterial thing, and this is found *pro Quer.* and Judgment accordingly; yet in a Writ of Error the Court shall take the Judgment to be upon the Confession, and not upon the Verdict, 21 *Ed. 4. 46. Per Cur.* Where the Judgment shall be taken upon the Confession, and not upon the Verdict.

Tryable by
Witnesses.

Verdict un-
certain.

M. O. and her second husband brought an Action of Dower against T. and demanded Dower of Indowment of one P. her first husband: It was agreed that this Tryal ought to be by Witnesses according to *Dyer* 155. And it was awarded by Court that the Council of either side should draw up Interrogatories, and put their names to them and then they should be delivered, and he should have the Examination of the Witnesses on both sides, and then seal up the Interrogatories again, and remain until they were delivered over to the Court and then *qui melius probat melius habet*, *Winch* Mary Over versus Tucker.

In a Writ of Dower of one Messuage, and a Garden; if the Defendant plead *N' unque seisin* of Dower, and the Jury find that the husband of the Demandant was seised of the said Messuage and Garden, all but so much as J. S. had, &c. this is not a good Verdict, because *non constat* how much of the Land J. S. had, and so merely uncertain what Judgment should be given, 2 *Roll. Abr.* b. Pope and King.

Damages. Judgment.

Request in
Pais to assign
Dower.

It is a needful thing for the wife after the death of her husband, as soon as she can, to demand her Dower before good Testimony, otherwise she will lose her damages, 1 *Inst.* 32. b. and a Request in *Pais* is sufficient.

In what Writ
of Dower da-
mages shall be
recovered, and
from what
time.

By the Statute of *Merton* the wife shall receive damages in her Writ of Dower from the time of the death of her husband; it must be in a Writ of Dower *unde nihil habet*, not in a Writ of Right of Dower; for in no Writ of Right damages are to be recovered, and she shall receive damages only when the husband died seised of the Freehold and Inheritance.

It is to be observed that the mean values and damages are to be recovered against the Tenant in a Writ of Dower, and the Lord Coke citeth *Belfield and Rouse's Case*. The Tenant as to parcel pleads Non-tenure, and for the Residue detainment of Charters upon which Pleas they were at Issue, and both Issues by the Jury found against the Tenant, and found further that the husband died seised such a day and year, and had a Son, and that the Demandant and the Son by six years after the decease of the husband took the profits of the Land, and that after the Son dyed without Issue, after whose decease the Land descended to the Tenant, as Uncle and Heir to him, by force whereof he entred and took the Profits until the purchasing of the original Writ, and found the value of the Land by the year, and assessed damages and costs; and the Demandant had Judgment to recover damages for all the time from the death of her husband without any defalcation. Let the Tenant take heed therefore how he pleads False Pleas. false Pleas.

The Statute of *Merton* extends to Copyholds where women are dowable.

If the wife have Dower assigned to her in *Chancery* she shall have no damages, for the words of the Statute be, *Es Vidua per Placitum recuperaverint*.

W. brought a Writ of Dower against *N.* and Judgment was given upon *Nihil dicit*, and because the Baron died seised a Writ of Enquiry of damages was awarded, by which it was found that the third part of the Land, which she ought to have in Dower, was of the value of 8 *l. per annum*, and that eight years *elapserunt a morte viri sui proximo ante inquisitionem*, & *assident damna ad 80 l.* And the Demandant had Execution after Judgment upon the *Habere fac. seisinam*. Error assigned: 1. Because damages are assessed to the time of the Inquisition where they ought to be but to the

No damages on Dower assigned in *Chancery*.

Judgment on *Nil dicit*, and Enquiry and Damages assessed.

the time of the Judgment, *Sed non allocatur.* 2. In cause damages are assessed for the whole eight years after the death of the husband, where it appears that for part of the said years the Demandants were seised of the Lands by force of the Judgment, and Execution in the Writ of Dower, and upon the Writ of Error was allowed, 1 Leon. 56. *Widdow and Nevil.* And it was assigned for Error in the Case, that they assessed damages beyond the bar venue: *Sed non allocatur.* For perhaps the Demandants have sustained more damage than the bar venue.

Judgment
when perfect.

If a Feme recover in a Writ of Dower before a Writ of Enquiry of damages awarded, and before the third part assigned by Meets and Bounds, the Judgment is perfect as to the Realty, and the damages are given by the Statute by way of addition. 17 Car. 1. B. *Steward and Steward.*

The last Judgment but an
Inquest of
Office.

If a woman recover Land in a Writ of Dower and after the Sheriff return damages from the Vendor purchased *usque diem Judicii*, and after the Plaintiff brought a Writ of Error in *Executione Judicii*. He may upon this assign Error in the Judgment given for the damages upon the Return of the Sheriff: For the last Judgment is not an Execution but an Enquest of Office by the Statute of *Mortmain*. And it is the use always to bring but one Writ in such Case; and there is not any Writ *Quia Judicia reddita*, but *Judicium*, Trin. 11 Car. 1. B. *Porter and Agar.*

Pasch. 5 Jac. Rot. 39. Nihil dicit in Dower. Judicium de recover Seisinam versus prefat. R. de tertia parte predicti cum pertin. Et idem R. de misericordia & averment de dying seised. The Demand was *de tertia parte unius messuagii & sedecim acrarum terrae cum pertin. per l'inquisitionem compertum fuit quod terrae & tenementa predicta cum pertin. in Brevis predicti. ut in inquisitione*

amerc.

anex. specificat. sunt & existunt unum messuagium, quatuordecim acras terra cum pertin. insimul jacen. in l. prad. ad terram vocat. J. ex Australi parte, &c. sunt tertia pars. Et ulterius found the time of the dying seised, and the damages, and the value, and costs. Ideo consideratum est quod petens recuperat versus prefatum tenentem valorem tertiae partis predicti. cum pertin. a tempore mortis prad. M. quondam viri, &c. qui quidem valor per tempus prad. in se attingit ad 100 l. Et dampna sua pradicti. ultra valorem prad. ad 5 s. 4 d. per inquisitionem prad. superius compert. necnon, &c. quae quidem dampna, &c. ad 9 l. 13 s. Note, The Jurors found the Land in demand to be of less quantity than the Demandant had counted. Ex Manuscript. Abi. Brownloe.

Judgment. Execution.

In a Writ of Dower, If the Heir of full age be vouched by the Tenant in the same County, the Judgment shall be conditional, viz. against the Heir if he have Assets, and if he had not Assets, against the Tenant, and the Tenant over against the Heir when he had, 2 Roll. Abr. 751. But if the Heir be vouched in another County, who entreth into the Warranty, and saith, he hath nothing by descent, and the Tenant avers that he had Assets, the Demandant shall recover presently against the Tenant generally, and shall leave him to sue over to have value against the Heir.

If the husband make a Lease for years, rendering Rent and dyes, the wife shall recover her Dower and have present Execution of the Land; and thereby she shall have the third part of the Reversion and of the Rent, and the Sheriff shall serve Execution of the Land as if there were no Lease for years; for it may be that the Lease is void, and if the Lease be good,

Judgment against the Heir conditionally.

How Execution shall be where there is a Lease for years.

good, he who claims the Lease may re-enter upon the Land notwithstanding the Recovery and Execution. *Godb. 165. Folsamb. Cro. Eliz. 564. Winch 80. L. Rep. 293.*

Dower against eight persons, two confess and six plead to Issue, how the Judgment shall be.

One seized of Land in Fee taketh wife, and feoffed eight persons, a Writ of Dower is brought against eight persons, and two confess the Action and the other six plead to Issue, the Demandant shall have Judgment to recover the third part of the parts of the Land in eight parts to be divided ; and after the Issue for the six found for the Demandant she shall have Judgment to recover the third part of the six parts of the same Lands in eight parts to be divided.

Amendment of Assignment of Dower.

In *Longvil's Case Trin. 16 Car. 2. B. R.* It was moved for amendment of the Assignment of Dower being under value, and on refusal of an equal division profered by the Daughter to him, with liberty to choose which two parts he would for the third, which the Court ordered, and committed the Sheriff for taking 60 l. of the Lady *Longvil* to execute a Writ of Execution and Information against him.

Rationabili parte bonorum according to the Customs of London.

H. C. sues *E. C.* Executrix of her husband, and declares by Bill original in nature of Debt *pro rationabili parte bonorum* in the Court of the Mayor and Aldermen of London, and alledgeth the Customs of London to be, that *quando Civis & liber de London'* dies his Goods over his Debts and general ought to be divided in three parts, and the wife of the Testator ought to have one part, the Executors the second part to discharge Legacies, and to dispose at their discretion, and the Children of the Testator, which were not sufficient provided for in his Life time, a third part ; and

the Custom is that the Plaintiff in this Case ought to bring into Court a true Inventory, and sue before the Mayor and Aldermen, and that she here had brought an Inventory of 18000 *l.* and demands a third part (6000 *l.*) of the Executor. And this was removed to the *Common Pleas* by Writ of Priviledge: And *Richardson* said, that the Plaintiff might declare in *London* without alledging the Custom, for that the Custom is well known there; and a *Procedendo* was granted, *Lit. Rep.* 324. *Honora Cason's Case.*

CHAP. XII.

Of Jointures.

The Nature and Reason of the Statute of 27 H. 8. cap. 10. of Joyntures. Construction of the said Act relating thereunto. What Estates are Joyntures within the said Statute or not. What is a good Joynture within the Statute of 11 H. 7. and what Alienation by the Wife is within that Statute, illustrated in several adjudged Cases. What Agreement or Waiver a Woman may make as to her Jointure; and what shall amount to an Agreement or Refusal of Pleadings.

As for the Nature and Reason of Joyntures.

IT was a Rule at Common Law, that a Right or Title which any had to any Lands or Tenements of any Estate of Inheritance or Freehold might not be barred by acceptance of any Waiver of collateral satisfaction or recompence; and this was the reason that no collateral recompence (as a Joynture) made to the wife in satisfaction of her Dower was any Bar of Dower at Common Law. Now
I before

before the Statute of 27 H. 8. cap. 10. (of which the greatest part of the Lands in England were conveyed to divers persons to Uses; and forasmuch as the wife was not dowable of Uses, her Father or Friends procured the husband to take an Estate of his Feoffors or others seised to his use to him and his wife before or after Marriage for their Lives or in Tail, a compleat Provision for the wife after the death of the husband. Then comes the Statute of 27 H. 8. which transfers the Possession and Estate of the Lands to the use by which the husbands were seised accordingly, and by consequence, if other Provisions had not been made, the wives would have no Dowers as well as their Joyntures; and for this reason Branches concerning Joyntures were added to the said Statute of 27 H. 8.

The Act expresseth plainly five Forms of Limitation of Joyntures: As,

1. To the Baron and Feme and to the Heirs of the husband.
2. To the Baron and Feme, and to the Heirs of their two Bodies.
3. To the Baron and Feme, and to the Heirs of the Body of one of them.
4. To the husband and wife for their Lives.
5. To the husband and wife for the Life of the wife.

But there are other Estates which are within the said Statute, though not mentioned; and that is now under consideration.

What Estates are Joyntures within the Statute of 27 H. 8. or not; or what is a good Joynture.

1. In respect of the Estate limited.
2. In respect of the manner and frame of the conveyance.
3. In respect of the Consideration.

Besides these five Examples above mentioned, there are other Estates, that are not within the Statute: As,

When an Estate is limited to a Man for Life, the Remainder to the woman for Life; tho' the woman hath no joint Estate with her husband, yet this Estate is as beneficial for her; and so was *Ashton's Case*, *Dyer* 228. *Ashton* in performance of Marriage covenants between his Son and one *A.* makes a Feoffment to the use of *A.* for Life for her Jointure, and after they entermarry, the husband dies, this was a Jointure within the intent of the Act, though all the Examples in the Act are of a Joint-Estate.

But the Estate, which by force of this Act shall be in lieu and Bar of Dower, ought by the Limitation to take effect after the husband's death immediately; and therefore if the husband makes a Feoffment in Fee to the use of himself for Life, and after to the use of *B.* for his Life, and after to the use of his wife for her Jointure, this is not within the Act although *B.* dies before the husband; for a Jointure must be an immediate Estate after the husband's death in Creation; and shall not be aided by any event subsequent, or by matter *ex post facto*. It was a Case put to my Lord Chief Justice *Bridgman*, when he was called up to be Chief Justice: A Man makes a Feoffment in Fee to the use of himself for Life, Remainder to the use of his second Son for Life, and to the use of such woman as he shall marry, the Remainder to the Heirs of his second Son; the Father dies, the second Son takes wife and dies, it is no good Jointure, and the wife may bring her Dower; for the Estate which was limited to the wife ought to be considered as it was at the time of the Creation of the Use; and at the time of the Creation it cannot be said to be a Jointure within the Statute, because the husband by possibility might have dyed before the Father, and then the

It must be immediate after the Husband's death in Creation.

wife should not have an immediate Estate, *Sid. 330*
3 Co. 2. Winch 33.

In some Cases though the wife hath immediate Freehold after her husband's decease, yet 'tis not a good Jointure to bar Dower; as if a Man make Feoffment in Fee to the use of himself for Life, the Remainder to his Executors for years, the Remainder to his wife for her Jointure, this is no good Jointure, *Winch 33.*

The Duke of *Somerset* purchased Lands to himself and the Dutches, his wife, and to the Heirs Male of their two Bodies, this is a good Jointure within the intent of the Act, *Dyer 96.*

It must be an Estate for the Life of the Wife.

It must be an Estate for Life of the wife; and an Estate to the wife for Life upon a Condition is a good Jointure within the Act, if the wife after the death of the husband accept it; for it was agreed that a Jointure is a competent Livelyhood of Freehold for a woman to take effect presently after the death of the husband for the Life of the wife, if she herself be not the cause of the determination or forfeiture of it. And therefore if the husband make a Feoffment to the use of his wife *pur autre vie* for her Jointure, this is not within the Act, as this may determine during her Life without any fault in her. But if a Man make a Feoffment to the use of himself for Life, and after to the use of his wife, *durante viduitate*, this is an Estate for Life to her, if she will, and therefore it is a good Jointure within the Act. And if the Condition bind her to any unreasonable thing, she may waive it, but when after the death of her husband she enters and accepts the conditional Estate for her Jointure she is barred of her Dower, *4 Co. 3.*

Acceptance of a conditional Estate for a Jointure, a good Bar of Dower.

An Estate in Fee-simple conveyed to the wife for her Jointure, and in satisfaction of her Dower is a good Jointure within the Equity of the Act of 27 H. 8. for this is a competent Livelihood for the wife of a

Estate of Freehold to take effect presently after the death of the husband for all her Life and more; but it is not a Jointure within 11 H. 7. c. 10. which restrains the Alienation of women, and to restrain an Estate in Fee-simple that it may not be aliened, is against a Rule in Law, and clearly out of the intention of the Act, 4 Co. 3. b.

What is a good Jointure within the Statute of 11 H. 7. cap. 10. and what Alienation by the Wife is within that Statute.

W. Bertram seized in Fee having three Daughters, by Indenture between him and *R. B.* in consideration of 400 *l.* paid by the said *R. B.* and in consideration of a Marriage had between *R. B.* Son and Heir of the said *R. B.* and *Margaret*, eldest Daughter of the said *W. Bertram*, and the preferment of the Blood of the *Bertrams* covenanted to stand seized to the use of *Robert* the Son, and the said *Margaret* his wife, and the Heirs of her Body; and for default of such Issue to the use of his other Daughters and their Issues, the Remainder to the Heirs of the said *W. Bertram*; the husband dies having no Issue, and *Margaret* by Fine conveyed it to the Defendant, on whom he re-entred as a Forfeiture within 11 H. 7. and it was resolved she was not a Jointress within that Statute notwithstanding the 400 *l.* paid by *R. B.* the Father; for the Land moved from *W. B.* the wifes Father, and the Preferment of the Blood of the *Bertrams* shews the intent that the husband's Heirs should not be preferred, but the wifes; for the meaning of the makers of that Law was only to disenable women, who have any Estate in Dower, or for Life, or in Tail jointly with their husbands, or only to themselves of the Inheritance or purchase of their husbands, or given to them by the Ancestors of their husbands,

The meaning of the Act of 11 H. 7.

or other persons seised to the use of such husbands, or their Ancestors, when they became sole, or with any after taken husband from making such Alienations, whereby the Heirs of such husbands might and before making of that Law, were frequently disinherited. But in this Case the Advancement is by the Ancestors of the wife, and is not of the Purchase of the husband or his Ancestors, nor assumed by the husband or his Ancestors, *Cro. Car. 244. Copland and Pyot, Jones Rep. 254.*

Fine and render for 1000 years is within the Statute.

Feme Tenant in Tail within the Statute of *H. 7.* accepted a Fine *sur Cognissance de droit* *conco, &c.* and by the same Fine rendered the Land to the Conisor for 1000 years, this is within the Statute, *3 Leon. 78. Barker and Taylor.*

If a woman hath Title of Dower, if before she be endowed she will enter and levy a Fine, the fine is within the said Statute, and yet she is not Tenant in Dower, *3 Leon. 78. Barker and Taylor.*

The Bishop of Exeter in consideration of faithful Service done by *N. T.* for many years past, gave Lands to *N. T.* and *Sybil* his Cousin in Tail, and Marriage was then intended to be solemnized between the said *N.* and *Sybil*, which after was solemnized; they had Issue, *N.* dies, *Sybil* marries again, she and her second husband alien the Land *Per Curiam*, This was no Jointure within the Statute of *11 H. 7.* for it was not a Gift by the husband nor any Ancestor of the husband; and the consideration of Service is no such Purchase as the Law intends, for it is not so valuable, but a voluntary Gift of the said Bishop, *Cro. Jac. 1. 173. Ward v. Walsbaw, Yelv. 101. 1 Brownl. 137.*

Gift by the Husband or any Ancestor of the Husband.

If it be no prejudice to the Heir of the Husband it is not deins la Statute.

Where the Land moves from the husband but the Remainder of the Estate is to a Stranger, so it could be no prejudice to the Heir of the husband the Alienation of the wife is no Forfeiture, as *Eliz. 224.*

Mich. 28. & 29 Eliz. in Laughter and Humfries
 Case it was agreed, that an Estate in Fee made by
 the husband to the wife is not a Jointure within
 11 H. 7. for that any collateral Heir might inherit
 it, and the Statute was made for the benefit of the
 Issues between them.

The Case was. A Man and a Woman being
 Joytenants in Fee of a Mannor intermarried, and
 levied a Fine thereof to a Stranger, who rendred
 it to them in Tail; they have Issue three Daughters,
 the Baron dies, the Feme takes a second husband,
 and they levy a Fine, and retake it in special Tail;
 the Feme dies *sans* Issue by the second husband,
 the Daughter enters on Lessee for years of the se-
 cond husband and distrained a Copyholder for Rent.
 And it was a Question whether the first Estate Tail
 was within the Statute of 11 H. 7. *Per Curiam*,
 For one Moiety it was, but for the other Moiety it
 was not.

Covenant to stand seised to the use of my Brother
 and his wife for their Lives, it is a Jointure within
 the Statute of 11 H. 7. as given by the Ancestor of
 the husband, and it is within the words of 27 H.
 8. which excludes Dower, *Plowd. 307. a.*

D. R. seised in Fee of 20 *l. per annum* Lands,
 having only two Daughters, covenants with *J. K.*
 in consideration of a Marriage between the said
J. K. and his Daughter *M.* and in consideration
 of 115 *l.* to be paid by *J. K.* to assure the said
 Lands to the use of himself for Life, and after to
 the use of *J. K.* and *M.* and the Heirs of their
 two Bodies, the Remainder to the Heirs of the Body
 of *Margaret*, the Remainder to *A.* in Fee; the
 Marriage took effect, *J. K.* dies, *M.* takes a second
 husband, and they alien by Fine. *Andrew* the Heir
 of the Body of *J. K.* and *M.* enters. *Per Curiam*,
 This is not a Jointure within the Statute of 11 H.
 7. because the Land moved from the wifes Father,

What Estate
 shall be said
 given by the
 Ancestor.

and her Advancement in Marriage is intended the Cause of the Gift, and not the Mony, *Cro. Jac. 624. Kinaſton and Lloid, Jones Rep. p. 13.*

Though a consideration of Marriage be joined with a consideration of Mony, yet 'tis a Jointure within the Statute.

But a Conveyance by the husband or his Ancestor in consideration of a Marriage, though it be joined with a consideration of Mony, yet is a Jointure within the Statute. *R. G.* seised in Fee by Indenture covenants with *R. B.* as well in consideration of 200 *l.* paid by *R. B.* and in consideration of a Marriage between *L.* his only Son, and *Anne* the Daughter of *R. B.* to convey the Land to the use of the said *L.* and *Anne*, and the Heirs of the Body of the said *Anne* to be begotten, and to his right Heirs. The Marriage takes effect, the Father dies before Assurance, *L.* makes the Assurance, and after they have Issue *R. G. L.* and his wife alien by Fine, *R.* the Son enters as a Forfeiture, this is a Jointure within 11 *H. 7.* But then the Question was, this being a Jointure within the Statute, whether the Alienation by the Feme with the first husband, who limited it, be a Forfeiture? *Per Curiam.* Its no Forfeiture neither within the Words, nor within the Intent of the Statute; not within the Words, for it is, the woman being sole or with any after takes husband; *aliter*, had it been a Conveyance by the Father: it is not within the Intent because the husband joined in the Alienation, and the Statute did not intend but to provide that disinherison should not be done to the Heirs of the Husband, *Cro. Jac. 474. Kinkman and Tompson.*

Fine and Render.

Baron and Feme seised in Fee Tail in the Right of the wife, they join in a Fine and have it rendred back to them and the Heirs of their Bodies ingendred: The Baron dies, the Feme and her second husband alien; they may, and the Heir of the first husband cannot enter; for though it is within the Letter yet it is not within the Equity of 11 *H. 7. Plowd. Eysson and Studd. Jones 253. Jenkins and Young.*

B. deviseth Lands to his wife in Tail, Remainder over and dies, the wife with the second husband aliens by Fine and dies, this is within the Words, but not within the Intent of the Statute; for the Statute intends only of Lands given for the Advancement of the wife, and the Remainder of the Lands is limited to a Stranger, and so shall not be intended to be limited for a Jointure, where no Inheritance is limited to the husband and his Heirs, so that the Entry of the Heir is not lawful, *Cro. Eliz. p. 2. Fisher and Pitful, 1 Leon. 261, 262. mesme Case.*

Inheritance must be limited to the Husband and his Heirs.

The husband seised of Lands *in jure uxoris*, they levy a Fine, the Conisee grants a Rent to them in Tail, the husband hath Issue and dies, the wife aliens the Rent, its out of the Statute of 11 H. 7. for the Rent comes in lieu of the Land, *Cro. Eliz. p. 2. cited in Foster's Case.*

Rent in lieu of the Land.

Baron and Feme being Tenants in Tail upon the Purchase of the husband, they have Issue two Sons, the husband makes a Feoffment to the use of himself for Life, the Remainder to the wife for her Life, the Remainder to the second Son, and his Heirs; the husband dies, the wife enters and makes a Feoffment to the Issue of the second Son, the eldest Son may enter, for it is a Forfeiture within the Statute of 11 H. 7. and this Feoffment by the Feme, though it be to him who had the Reversion in Fee, is a Forfeiture within the Statute, *Sid. p. 63. Jones and Philpot.*

Feoffment of the Feme, tho' to him who had the Reversion in Fee, is a Forfeiture.

A Man and a Woman being Jointenants in Fee of a Mannor intermarried, and after levyed a Fine thereof to a Stranger, who rendred it to them in Tail; they have Issue a Daughter, the Baron dies, the Feme takes a second husband, and they levy a Fine, the Remainder to them in Tail special. *Per Curiam*, For the one Moiety it is a Forfeiture within the Statute of 11 H. 7. and for the other, not, *Cro. Eliz. 524. Langbier and Humphries.*

Fine and Ren-
der.

A woman Tenant in Tail within the Statute of 11 H. 7. accepted a Fine *sur Cognissance de droit come ceo*, and by the same Fine rendred the Land back to the Cognisor for 1000 years, this is within the Statute; for this is as mischievous as a Discontinuance, *Godbolt 6. 3 Co. Sir George Brown's Case Moor 222. 2 Leon. 168. Vide supra Barker and Taylor's Case.*

Of Estates devised by Will.

Some have been of Opinion, that no Estate devised by Will can be a Jointure within 27 H. 8. for every Jointure by that Act is intended to be made before or during the Coverture; but a Devise takes effect after the death of the husband: But in *Lord and Randal's Case, Mich. 38 & 39 Eliz.* it was adjudged *contra*, with this difference. Inasmuch as a Devise imports a Consideration in it self, and therefore a Devise may not be averred to be to the use of another than the Devisee, unless it be express in the Will, no more may a Devise be averred to be for a Jointure unless it be express in the Will. But if a Man devise Lands to his wife for term of her Life, or in Tail, &c. for her Jointure and in satisfaction of her Dower, this is a Jointure within the 27 H. 8. for this is within the Equity of the said Act, 4 Co. *Vernon's Case.*

In *Vernon's Case* Lands were settled on J. S. and J. B. and their Heirs to the use of himself for Life, and after his decease to the use of his wife for Life &c. and avers in pleading, that the said Estate be-
mitted to the wife was for her Jointure, but it was upon Condition that she should perform his Will, yet it may be averred to be for her Jointure, for one Consideration may well stand with another, and although it be not express in the Deed, yet it may be averred.

Of the Feme's waving or agreeing to her Jointure.

If a Jointure be made to the wife before Coverture, after the death of the husband; the wife may not wave it and take her Dower, as she may do by a Jointure made during the Coverture: And

If Lands are conveyed to a woman before Marriage for part of her Jointure, and after Marriage more Land is conveyed to her for her full Jointure, and in satisfaction of all her Dower, and after the husband dies; in this Case, if the woman waves the Land conveyed to her use after Marriage, she shall have the Land conveyed to her before Coverture, and her Dower also in the residue; for Land conveyed to the wife for part of her Jointure, or in satisfaction for part of her Dower is no Bar for the incertainty of any Dower.

If a woman enter and agree to her Jointure made after Marriage, then she cannot wave it: But

If she bring a Writ of Dower and had Judgment of a third part, she hath estopt and concluded her self to claim any Estate; for by this she hath affirmed her self to have but a Title of Dower.

Acceptance of Dower by Deed indented shall conclude the wife of her Right.

By bringing her Writ of Dower of the Residue she hath tacitly affirmed that she had not agreed to any Jointure made to her.

Pleading.

In a Writ of Dower the Tenant pleads, *B.* being seised in Fee made a Feoffment to the use of himself for Life, and to *Dorothy* his wife for Life for her Jointure, the Remainder over to a Stranger, and *Dorothy* held in by Survivor claiming the said Estate. The Demandant replied, That before the said

said Feoffment, the said B. covenanted to stand *seised* of the same Lands to the use of himself in Tail, the Remainder to his wife for Life, the Remainder to a Stranger in Tail, and afterwards made the Feoffment *prout*, and then died *sans* Issue, and afterwards she entred by the Indenture and was *seised* by Remitter: To which the Tenant rejoins that she held it claiming her Estate by the Feoffment in Jointure, and demands Judgment whether against that Claim she should be remitted: The one Question was, whether the Rejoinder be good without traversing the Intail claimed in the first Estate, alledged in the Replication, or whether the Demandant ought to have taken a Traverse, because the Tenant a Bar pleads an Entry claiming that Estate by the Feoffment. *Per Curiam*. The Tenant ought to have taken a Traverse to the matter alledged in the Replication, and this is Matter of Substance; and by the Law, *per Curiam*, she shall be remitted for the benefit of him in Remainder, and *volens* volens she is in of her first Estate, and that it is not a Jointure because it was to begin after an Estate Tail. *Cr. Jac. 489. Hob. 71. Shirley and Wood.*

Traverse.

She must plead specially that the Jointure was made during Coverture to have her Dower.

The Statute of Uses hath a general purview, for Jointures made for wives without distinguishing before or after Coverture shall bar Dower, and it comes with a Proviso, that if it be made during Coverture she may refuse it and take her Dower, which is a kind of remedy provided for her out of the generalty of the Law, and therefore must be pleaded by her, *Hob. 71.*

Where the Tenant pleaded a Jointure made to the Demandant and acceptance of it after the husband's death, the Demandant may plead a Refusal after the death of the husband without traversing the Acceptance; for it was not material of her part to plead but that must rise of the part of the Refuser, *Bar. 104.*

C H A P. XIII.

Of Fines and Recoveries.

Of a Fine levied by a Feme Covert as a Feme sole, and the Operation of it. The reason why a Feme Covert shall be barred by the Fine. The Operation of a Fine by Baron and Feme illustrated by several Cases of Commissioners taking a Fine of a Feme Covert Infant. Of the time of acknowledgment where a Feme Covert shall be examined & put. Where a Feme Covert shall be barred by Fine and Non-claim. Of the Declaration of Use by a Feme Covert. Of a Fine levied to Baron and Feme, and the Operation of it. Of a Common Recovery. How a Feme Covert may be Tenant to a Præcipe. A Feme Covert barred by a Common Recovery. Whether a Feme Covert in passing a Recovery ought to be examined privately. Recovery by Baron and Feme within Age and Appearance by Attorney, if it be Error. Of Recovery by default.

Fine levied by a Feme Covert, as a Feme sole, and the Operation of them.

THough by the Law of Nature the wife is put under the Obedience of her husband, and Nature hath submitted her Will to his, and therefore will not bind her by her Acts joining with her husband, because they are judged his Acts and not hers, in that she wants a Free-Will; yet the Law of the Land for necessity sake of Commerce, and the like, by a Law of Policy makes bold with this Law of Nature in a special kind; and therefore

The Reason why a Feme Covert is bound by her Fine.

therefore allows a Fine levied by the Baron and Feme, because she is examined of her Free-Will judicially by an authentick Person trusted by the Law and the King's Writ, and so taken in a sort as a free woman; so also when she comes in by Receipt.

Fine levied by a Feme Covert, as a Feme sole, her Husband shall defeat it.

If a woman Covert levy a Fine alone, as a Feme sole, this shall bind her by the reason before given; but her husband may defeat it for himself and her too; but she shall not be received to say she is covert, though her husband shall; and he may enter and restore the Land to himself and his wife. *Hob. 225. 7 Co. 8. Countess of Bedford's Case.*

But she shall not.

But if a Feme Covert levy a Fine, as a Feme sole, if her husband die she shall not defeat it, but the husband may defeat it during his Life, *Stiles 254. Haywood and William's Case.* So is 7 H. 4. 23. If a Feme Covert levy a Fine, as a Feme sole, if the husband defeat it not, this shall bind her and her Heirs for ever. If a Feme Covert take a husband and they two levy a Fine, this shall bind her and her Heirs for ever, 7 H. 4. 24. 9 H. 4. 27. 9 H. 6. 34. But in both these Cases the husband may defeat it, and if the husband avoid the Fine this shall avoid the Fine against the wife and her Heirs perpetually.

If a woman levy a Fine by the name of *A. S.* of *J. S.* this Fine is merely void, *Quia constat per Record*, that she is Covert, *Sid. 122.*

One with another Mans Wife levies a Fine, the Court will not stay it.

If *J. S.* with the wife of another levies a Fine by the name of *J. S.* and *Jane* his wife of the inheritance of the Feme, and he who is the husband comes into Court and shews the matter, and prays to stay the Fine, yet the Court shall not stay it; for the Court shall not determine the Loyalty of Matrimony; and if the truth be so, that she is the wife of *J. S.* it shall not hurt the husband, *7 Jac. B. Keblethwait and Ward.*

The Court would not stop a Fine taken of a Feme Covert when she was dead, 1 *Rolls Abr.* 114. cited 2 *Ventr.* 48.

If the husband seised in Tail of Land for valuable Consideration bargain and sell this to another in Fee, and covenant, that he and his wife shall levy a Fine for better assurance; and it is agreed that 30 *l.* part of the Consideration shall be paid to the husband upon the Cognizance of the Fine by the Baron and Feme; and after they acknowledge a Fine before the Judge in the Circuit, and the 30 *l.* is paid and received by the wife, the husband being sick in bed, and the husband dies before the Term, and upon this the wife stays the passing of the Fine, and after brought a Writ of Dower; the Bargainee shall not have any remedy in Equity against the Dower, for that it is against a Maxim in Law, that a Feme Covert shall be bound without a Fine, 1 *Rolls Abr.* 375. *Hody and Lunn.* But the Court agreed, if the wife had any personal Estate, as Executrix or Administratrix to her husband, she shall be liable for this; and thereupon a Commission was granted to enquire of Assets.

Fine acknowledged by Baron and Feme before a Judge in the Circuit, and on Bargain and Sale, and Baron died before the Term the Vendee has no remedy in Equity.

The Operation of a Fine by Baron and Feme.

When Baron and Feme join in a Fine of Lands, it shall be intended the Inheritance of the wife, if the contrary be not shewed.

Baron and Feme are Tenants in Tail, as Lands are given to *J. B.* and *Elix.* his wife, and to the Heirs of their two Bodies begotten, the Remainder in Fee to the said *J. B.* *J. N.* levied a Fine thereof with Proclamations come ceo, &c. *J. N.* dies; after his death and within five years *Elix.* enters enterclaiming her Estate. It was adjudged that the Entry of *Elix. abetb* was lawful by the Act of 32 *H. 8.* cap. 28. whereby it is enacted, That no Fine, Feoff-

The Statute of 32 *H. 8. c. 28.* explained.

ment

ment or other Acts, &c. or done by the husband only of any Lands, &c. being the Freehold or Inheritance of his wife during the Coverture between them full in any wise he or make any Discontinuance thereof or be prejudicial or hurtful to the said wife or her Heirs, &c. Though the Words of the Act be, To Freehold or Inheritance of the wife, and the Land in this Case were the Freehold and Inheritance of the husband as well as the wife, yet because it was in equal mischief it was adjudged to be within the Statute, 2 Inst. 681. So is *Hob.* 257, 259. If Baron and Feme be Tenants in special Tail the Baron's Fine is a clear Bar to the Issue by 32 H. 8. though the wife may enter, if she survive, and though the wife be remitted, if any Estate be limited to her upon her husband's Fine; and when the wife enters upon the Conifsee she is remitted to her own Entail, but it is not to be aliened nor descend; descend it cannot, because the husband's Fine bars; and alien it cannot be, because it was aliened before, *Vide* more in *Hobart*, *Duncomb* and *Wingfield's Case*.

Baron and Feme Tenants in special Tail, Baron levies a Fine, *quid operator*.

If Baron and Feme be Tenants in special Tail and the Baron only levy a Fine, the Femes Estate Tail is only turned to a possibility, and only reducible by Entry, if she survive, *Hob.* 257, 259. When the Baron dies the Feme by her Entry becomes Tenant in Tail again, and not Tenant in Tail after possibility of Issue extinct, though the Estate Tail cannot descend.

Feme by Fine bars her self of a possibility.

R. E. seised in Fee levied a Fine to the use of himself for Life, and after to the use of such a wife as he shall marry, and shall survive him; he and his wife levy a Fine to a Stranger; the Baron dies, the Feme survives, she by her Fine hath barred the possibility by Estoppel, *Moor* 557. *Wells* and *Feme contra. Cro. Eliz. mesme Case*.

If Baron and Feme acknowledge their Right to another by Fine and Release, and the wife only obliges her and her Heirs to warranty, this is good, 44 Ed. 3. 36. b.

If Baron and Feme levy a Fine (of Lands whereof they are seised *jure uxoris*) *come ceo, &c.* this shall not be received with Warranty by them and the Heirs of the husband; but it shall be received by them and the Heirs of the wife, because it is the Inheritance of the wife, 44 E. 3. 14. Warranty.

Lessee for Life, and after the Reversion is granted by Fine to Baron and Feme, and to the Heirs of their Bodies, the Remainder in Fee to the Baron, and the Baron and Feme by Fine release all their Right to the Lessee, and after they die *sans Issue*, this is a good enlargement of the Estate of the Lessee, and this shall bar the collateral Heirs of the Baron, 30 E. 3. 4. b. Release.

A. Feme sole, and B. Jointenants for Life, A. Fine enure as takes husband, and *A. and her husband levy a Fine a Release.* to *B. by which A. and her husband concedunt the Land, & totum, &c. & quicquid, &c. to B. and his Assigns for the Life of A. and this with Warranty, and after B. dies during the Life of A. in this case he in Reversion may enter, for that this Fine enures as a Release to B. Trin. 22 Jac. B. R. Esforce and Scaven.* The Lessor may enter into the whole, and there shall be no Occupant of any part, because this Fine enures as a Release, not by *Mitter l'estate* but by way of Extinguishment.

Baron and Feme by Fine grant Land to *A. for Feme Covert* 99 years, if he so long live, and they by the same by Warranty in a Fine Fine warrant the Lands to *A. contra omnes homines sur concessu* is bound in an *into termino predicto*; the Baron dies: *Per Curiam* Action of Covenant lies against the wife upon her Warranty in the Fine, although she was Covert Baron: For when the Warranty is only annexed to an Estate for years,

it is only a Covenant for Damages in the person of the Lien, which shall bind them and make them responsible for damages, as well as where such Warranty is annexed to the Freehold, they shall be bound to warrant the Land, and to answer in value of their proper Lands, 2 *Sand.* 180. *Wotton and Hele*, *Abb. Rep.*

What Fine is no Bar to her Election of Dower.

The husband after Marriage assured to the wife Jointure, they both levied a Fine *sur comsances* *droit come ceo & que il ad &c.* of the Gift of the husband; this is not any Bar to the wife of her Dower, for the Election is not given to the wife to claim her Jointure until the death of the husband. *Dyer* 358.

Construction.

W. and his wife were seised of Lands to them and the Heirs of *W.* they by Indenture bargain and sell to *P.* in Fee, wherein was a Proviso, that if *W.* his wife, or the Heirs of *W.* pay 100 *l.* to *P.* on such a day, that then it should be lawful for *P.* and the Heirs of *W.* to enter, and to rehave said Lands, joy, &c. and that then (after such payment) the Indenture and all other Fines and Assurances so passed between the said parties, should be void in use of *W.* and his Heirs (leaving out the wife). *W.* and his wife within seven years levied a Fine of *W.* died, his wife paid the 100 *l.* *Per Curiam* the Feme shall have the Estate for her Life; so is the first part, and the other Clause is not repugnant but may stand together, *Cro. Eliz.* 744. *Saunder* and *Manors*.

Exchange.

Baron seised of Lands in the right of his wife the Baron and Feme both joined in Exchange with a Stranger for other Lands, which Exchange was executed; the Baron and Feme seised of the Lands taken in Exchange aliened the same by Fine, and the wife after the death of her husband may claim into her own Land notwithstanding that Fine, 1 *W. & A.* 285.

A. makes an Estate to Friends in Trust to the use of his wife to commence after his death, the wife joins in a Fine with her husband of the Land leased in Trust; this Fine shall dock the Trust, and there being an Extent upon the Land leased, this Trust shall not prevent the Extent by reason of the Fine.

Fine by the Wife docks a Trust.

A Fine is levied by Baron and Feme, the Feme being within Age, and in Error brought the Fine is reversed for the Non-age of his wife. The Question was in *Worsley and Charnock's Case*, if the Fine should be utterly reversed, or should be reversed only as to the wife, and should stand good against the husband; and two great Presidents were cited, the one contrary to the other; they who argued that the Fine should be reversed for the whole, cited *Ely and Ford's Case*, H. 8. A Fine was levied between *R. Ely* Plaintiff, and *N. Ford*, and *Jane* his wife, Defendants; the wife being within age, and Judgment was given *Quod finis prædict. annulletur & pro nullo penitus habeatur*, and that the Baron and Feme should be restored; and thereupon a Writ issued to the *Custos Brevirum* to bring into Court the Foot of the Fine, and it was presently cancelled in Court. The other President contrary was 7 *Eliz.* Baron and Feme levied a Fine, the husband died the wife being within Age; the wife took another husband and they brought a Writ of Error, and the wife by Inspection was adjudged within Age, and the Fine was reversed as to her and her Heirs only. But indeed in this Case the second husband was a Stranger to the Fine, and so it might seem absurd to reverse it as to him; but in the principal Case it was adjudged, that the Fine should be reversed as to both; for the whole Estate moved from the wife and all passed out of her, and Judgment was given *Quod finis prædict. reversetur*. And by *Gawdy*, We cannot by this Reversal make the Conisee to have a particular Estate during the Life of the wife, *ideo*.

Baron and Feme levies a Fine, the Feme being within age, the whole Fine shall be reversed, and not only *quod annulletur*.

penitus reuerſetur, 1 Leon. 114. *Worſley and Charnock*. 2 Co. 77. cited in the Lord Cromwel's Caſe.

Feme Covert
Infant levied a
Fine, in Error
the Court will
not permit the
Husband to
diſavow the
Guardian.

A Feme Covert Infant levied a Fine, and her Friends got a Writ of Error in her and her husband's name, and the Court would not ſuffer her husband to reſeaſe. But *Hales*, I cannot ſee how that can be avoided : But he ſaid, he had known in ſuch Caſe, that the Court would not permit the husband to diſavow the Guardian which they admitted in his wife, 1 Ventr. 209. 3 Keb. 14. in *Marſhal and Lady Prettyman's Caſe*.

Alledged that
the Feme died
before the
Teſte of the
Certificate.

1 Mar. Dyer 89. b. *Verny's Caſe*. A Fine was levied by a Feme Covert, who died before Certificate and Ingroſſment ; and the Fine afterwards certified and alleged Error in *Fait*, that the woman died before the Teſte of the *Dedimus*, whereas the Judge had certified the Concord taken after ; and this was not admitted to be queſtioned after the Certificate.

The Court to
judge of the
Infancy of a
Feme Covert,
and not the
Jury.

Feme Covert levied a Fine within Age ; ſhe was inſpected by the Court, and adjudged within Age ; whereupon a *Scire Facias* was iſſued to the Tenants, who pleaded ſhe was of full Age at the time of the Fine levied ; upon which Plea iſſue was joined and a Tryal had at the Aſſiſes, and Verdict per *Quer.* who came into Court and now prayed Judgment. *Per Glyn*. The Court is to judge of her Infancy, and not the Jury ; and though the Proceedings are not duly had, yet they do no hurt, and the Fine was reverſed, *Stiles* 472. *Videan and Fletcher*.

Enteing the
Kings-ſilver.

If Baron and Feme levy a Fine, and the Condition is taken ſix days before Term. Paſch. 7 Jac. the Writ of Covenant is returnable *quindena Paſche* which was the third day of May, and the husband dies the ninth of May, the Kings-ſilver not being entred ; yet if upon Examination it appeareth that the Clark had entred the Kings-ſilver in Paper before any Exception taken to it, and that now he is

entred the Kings-silver on the back of the Writ of Covenant as it ought to be, the Fine shall not be stayed, *Pascb. 7 Jac. B. Bootbes's Case*: For when this is entred it shall have relation to the Writ of Covenant.

Farmer and his wife acknowledged a Note of a Fine 26 *March* by *Dedimus Potestatem*, and the wife died the 27th of the same Month; the 28th day Composition was made in the Alienation Office on a Writ of Covenant returnable in *Hillary* Term before; and the Kings-silver was entred in the Office of the Kings-silver as of the same *Hillary*-Term, and so the Fine was passed and engrossed, and in *Easter*-Term the Heir of the wife moved against this Fine; but the Court resolved the Fine must stand, *Hob. 330. Farmer's Case*.

Baron and Feme and a third person levied a Fine, Writ of Covenant against Baron and Feme and the third person, and in the Summons the Feme was left out; for this Error the whole Fine shall be reversed; for being ill in part it is ill in all, *Cro. Eliz. 290. Baxter* and his wife against *Atomating*. Error.

If Baron and Feme are bound to levy a Fine upon reasonable Request, if Request be made when the wife is *enseint* or sick, it is not reasonable; and the Request to the husband alone is not good, *More 124.* What shall be a reasonable Request to levy a Fine.

Of Commissioners taking a Fine of a Feme Covert.

Herbert Parrot's Case, A Feme Covert (his wife) at twenty years of Age levied a Fine before Commissioners in the Country, and the wife dies *sans Issue*; she had settled the Estate upon her and her husband, and the Heirs of their two Bodies: The Court was moved to set it aside, but they agreed they could not meddle with it; but if the wife had been alive and under Age, they might bring her in by *Habeas Cor-*

pus, and inspect her, and set aside the Fine upon Motion, for perhaps the husband would not suffer the bringing of or proceeding in a Writ of Error. And the Commissioners in this Case were not fined, because they could not discern by the View whether she was of Age, she being twenty years old. But had it been apparent by Inspection, that she was within Age, then they ought to have been fined. 2 Ventr. p. 30. Mod. Rep. 246. But in *Cavendish's Case*, 1 Rol. Rep. 113. the Commissioners did perfectly know that the Feme Covert, who levied the Fine, was within Age; and for this cause every of them were fined, but the Fine stood good and was reversed.

Carrel's Case in *Dyer* 220.b. and 12 Co. 142. was A Feme Covert of nineteen years of Age acknowledged a Fine before Commissioners, several Judges being in Town, who might have examined her. She died on *Friday Easter Week*, but the Fine and Kings-silver was entred as of *Hillary-Term*, five days before the wife's death: The original Writ of Covenant bore Date 15 Jan. *Ret' Craft. Pur.* and the *Dedimus Potestatem* 18 Jan. *Dyer* saith the Fine was stopt the ingrossing, for undue means in gaining it, but in 11 Co. the Fine adjudged good.

Where a Feme Covert shall be examined or not.

A Feme Covert is not to be examined upon a Fine, but when she and her husband pass some Estate or Interest, or make a Grant and Render to another, or release her Right by a Fine of Lands or Tenements, 1 Inst. 353.

The Examination of a Feme Covert ought to be secret, and the effect is to examine her whether she be content to levy a Fine of such Lands, naming them particularly and distinctly, and the Estate that passeth by the Fine of her own voluntary free Will.

not by Threats, Menaces or any compulsory means; but where nothing is moved in the Fine, but only that the husband and wife do take an Estate by the Fine, this shall not conclude the wife, because in such case she shall not be examined.

Against a Fine levied by her self a woman cannot be remitted, because she was thereupon examined.

If a Fine be levied of Land to Baron and Feme, and the Baron and Feme grant and render the Land, there the wife shall be examined, and the Examination must ever be upon the Writ, and therefore a Baron and Feme upon a Fine levied to them of Land cannot grant and render out of the Land, because the Rent is not contained in the Writ, 2 *Inst.* 515.

8 *H. 4.* 8. *b.* If a Fine *sur Grant & Render* be made to Baron and Feme, she shall not be examined; this is to be understood as the principal Case there, that there was not any Conifance by Baron and Feme, but only a Grant and Render by the other.

If a Fine *sur Conifance de droit* be levied to Baron and Feme rendring Rent, the Feme shall be examined, because she is to be charged with the Rent, 46 *E. 3.* 15. *b.*

If a Fine upon Release be levied to Baron and Feme, she shall not be examined, because the Fine is not an Estoppel, but for her advantage, 3 *H. 6.* 42. So if a Fine *sur Conifance de droit* be levied to Baron and Feme, this shall not estop the wife to claim another Estate.

Now a Fine, which passeth an Estate, ought not to be received if she be not examined; but if the Fine be received and recorded, the Feme Covert or her Heirs shall not be received to aver that she was not examined nor assented; for this should be against the Record of the Court, and tend to weaken the general Assurances of the Realm, 2 *Inst.* 515.

Where a Feme Covert shall be barred by Fine and Non-Claim.

Fine and Non-Claim of the wifes Land shall bar the husband, who suffered five years to pass, and all claiming under him, and the wife her self during the Coverture, but the wife shall have a new fine years after the death of the husband, *Cro.Car. 300. Holme and Heyfield's Case. 4 H. 7. c. 24.*

Tenant for Life, the Remainder in Fee to a Feme Covert; the Tenant for Life levies a Fine, the husband dies, the wife takes another husband, the Tenant dies, the five years pass, the husband dies, the wife is barred and is not remedied by the Statute of 32 H. 8. 28. *Dyer 159. in Margine.* And this neglect of the second husband shall be prejudicial to the wife, *Whetstone and Wentworth.*

A Man seised of Lands in Fee taketh a wife, and after levies a Fine, and the Proclamations were made, and the five years pass in his Life, and he dies, and after his death other five years pass, and after the wife brought her Writ of Dower, she shall be barred, because the wife had Title by the Intermarriage, although it cannot be executed till after the death of the husband; and because she had Title at the time of the Fine levied she shall be bound by Non-Claim for five years after her Title consummation, *More 53.*

Declaration of Uses.

Beckwith's Case settles this in these Resolutions 2 Co.

If the husband alone declare the use of the Fine levied by them both of the wifes Land; his Declaration shall bind the wife, if her dissent doth not appear: Neither is it always necessary that the name

of the wife should be set to the Indenture, which doth declare the Use.

The wife hath Estate in the Land, and is not *sui juris*, the husband is *sui juris*, but he had no Estate in the Land, and therefore they differ in the Limitation of the Uses, all is void.

If the husband and wife sell the Land of the wife for Money by parol, and after levy a Fine to the Vendor, this shall bind the wife without other Writing, proving her assent.

If Baron and Feme levy a Fine of the wifes Land, and an Indenture is written in the name of the Baron and Feme, whereby the Land is limited to certain Uses, and the husband only seal and deliver it, and the wife will not, but disagrees to it; this Limitation of the Baron shall not bind the wife, although the wife had not exprest her disagreement by any Deed or Limitation of other Uses, *Mich. 15 Jac. B. R. Webb and Worfield.*

Of a Fine levied to Baron and Feme, and the Operation. Vide supra Tit. Examination of Feme Covert.

Feme Covert is Tenant for Life, the Remainder in Fee to the Son, which she shall have, and he in Reversion before the Birth of the Son bargain and sell the Land, and levies a Fine of it to the Baron and Feme, the particular Estate of the wife is drowned in the Reversion, and the contingent Remainder is destroyed, *2 Sand. 386, 387, 388.*

Recovery.

Common Recovery against Tenant in Tail and his wife having nothing shall bind the Entail, *Plowd. 549. Eare and Snow, Hob. 27.* And a Voucher may

may be by the Baron only upon a Release with Warranty to him and his wife, if the wife have nothing.
Hob. 27.

Feme Covert
is barred by a
Common Recovery.
Its prudential
to examine a
Feme Covert
upon a Recovery,
but not
necessary and
why.

Tenant for Life, the Remainder to Baron and Feme and their Heirs, the Baron and Feme suffer Recovery : The Question was, if the Heirs of the wife are bound by this Recovery, because the Feme being Covert, it was conceived she was not Tenant to the *Præcipe*, because it appears not she was examined. *Per Curiam.* It is held *Br. Abr. Recovery in value 27.* A Feme Covert is barred by a Common Recovery, and it is the common practice, 10 Co. 43. And it is not necessary to examine a Feme Covert upon a Recovery, though it be prudential to do it; though in a Fine it is otherwise, because there is no Recompence in Value; and the Feme here is Tenant to the *Præcipe*, and she shall be stopped to speak against the Recovery, for she joins in the Recovery with her husband, and here is default made by the Baron; and now the Record is perfect, and a thing contrary to it is not to be asserted against it; but before the Record was perfect she might have pleaded; and the Recompence in Value here shall go to the Heirs of the wife, and the Tenant for Life is also bound by this Recovery, and the Feme is privy to the Recovery. If a Stranger had been Tenant to the *Præcipe*, and the Baron and Feme had been vouched, the Feme had been bound, and this is a stronger Case, *Stiles 319. Locker and Palfreyman.* But it was the Opinion of Chief Justice *Bridgman* in *B. C. Sid. 11.* That a Feme Covert ought to be privately examined in a Common Recovery, but said, the practice was otherwise, but it was a fault, and ought to be corrected, yet the Recovery passed without Examination: And so is my Lord *Coke's* Opinion 10 Co. 45. in *Portington's* Case, That the wife had used to be examined upon a Recovery, and a *Dedimus Petitionem*

granted

granted to take her Examination upon the Continuance.

Baron and Feme seised to them and the Heirs Males of the Body of the Baron, the Remainder in Tail to B. the Reversion to the right Heirs of the Baron; the Baron levies a Fine; the Conisee suffers a Recovery, and voucheth the Baron, who voucheth the Common Vouchee: *Per Curiam*, this Recovery shall bind the Tail, because he comes in in privy of the Tail, 3 Co. 6. *Cupledike's Case*. The wife who had an Estate for Life with her husband was not vouched; and though the Estate of the wife is not recontinued, yet the husband, as Voucher, shall be in Judgment of Law in Privy of the Estate Tail which he once had; and the Estate of the wife by the husband's Fine is put to a Right, so as the husband comes in as sole Tenant in Tail: *Aliter*, if the Baron and Feme are seised to them and the Heirs of their two Bodies with Remainders over. But

The Baron only is vouched, *Quid operatur*.

An Estate is made to Baron and Feme, and to the Heirs of the Body of the husband, a Common Recovery is had against the Baron, who voucheth the common Vouchee; the Baron survives his wife and dies without Issue; this is not good to bar the Remainders, because at the time of the Recovery there were no Moieties between him and his wife; and the Baron had not power to sever the Jointure, and he, during the Life of his wife, is not seised by force of the Tail, so that the *Præcipe* being brought against him only, the Conveyance cannot for any part enure to the Estate Tail or to the Remainder; to all the Estate it cannot enure, because the wife had a joint Estate with him, who was no party to the Recovery; and for a Moiety it cannot be good, for there are no Moieties between Baron and Feme, 3 Co. 5. *Owen and Morgan's Case*.

Bargainee a
good Tenant
to the *Præcipe*.

If Baron seised in the Right of his wife for Life the Remainder in Tail to B. the Remainder to C. and the husband bargains and sells the Land to another, against whom a *Præcipe* is brought, who voucheth him in Remainder, and so a Common Recovery passeth; this shall bind the Remainder although not the wife, because the Bargainee was a good Tenant to the *Præcipe*, 2 *Rolls Abr.* 394.

Where Baron and Feme are vouched it shall be intended to be in the Right of his wife, 20 *H. 7. 1. b.* And therefore in *Grosvenor* and *Massye's Case* 1 *Leon.* 291. n. 318. Four husbands and their wives are vouched in a Recovery, and the Plaintiff brought his Writ of Error as Heir to one of the husbands; he ought to have brought it as Heir to one of the wives.

Baron and
Feme suffer a
Recovery as
Vouchees, if
it be a For-
feiture.

In consideration of Marriage the Father enfeoffed his Son, and a Feme sole in Fee-simple, who intermarry, this is not within the Statute 11 *H. 7.* after grant the Land by Fine to the Father, who renders to them in special Tail, this is a Conveyance of each one for his Moiety to the Father, which Moyeties they take divided by the Gift before Marriage, and then the Render of all to them in special Tail; as to the Moiety of the Son, which he had by the Fine, the Gift of the Father to the Son and his wife is within the Statute of 11 *H. 7.* But as to the Moiety, which the wife gives by the Fine, and which the Father renders in special Tail, this is not within the Statute. The Baron and Feme suffer a Recovery as Vouchees, this is a Forfeiture within the Statute of 11 *H. 7.* *Moor* 715. The Queen and *Savage*.

The Wife in
a Common
Recovery, be-
ing within
Age, ought to
appear by
Guardian.

If a Common Recovery be suffered, and the Baron and Feme as in Right of the wife (the Feme being within age) are vouched, and they appear by attorney and vouch over, and so a Common Recovery is had, this is Error; for though the husband be

full Age, yet the wife being within Age, she ought to appear by Guardian, *Hill. 17 Jac. B. R. Holland and Lee*. But faith *Rolls, 1 Abr. 288. dubitatur. Dyer 290. 366*. But no doubt is in the Case; for the appearance by a Feme Covert, in a Recovery, within Age by an Attorney, is Error; and though it may be objected, that the husband is of full Age, and therefore he may make Attorney for himself and his wife, the Law is not so; for the Rule is, that the husband cannot give away or lose the Inheritance of the wife; but it must be given or lost by her selfor her own Act, and she ought to appear by Guardian notwithstanding the full Age of the husband, who is to be joined for Conformity with her, *Sid. 322. Raby and Robinson*.

Dyer 290. 363. A Recovery suffered by Baron The Custom and Feme of the Land of the Wife is as strong to of *London*, bind the Right of the Feme Covert by the Custom of *London*, as a Fine at Common Law. *Vide* there such Custom as to *Wales*.

Recovery by Default.

If the Baron lose by Default the Fee-simple Lands of the wife, the wife had no Remedy but by a Writ of Right; but by the Statute of *W. 2. c. 3*. she shall have a *Cui in vita*.

If a Recovery be had against Baron and Feme, Tenants for Life by Default, they may have a *Quod ei deforceat*, 2 *Inst. 350*. by *Stat. W. 2. c. 4*. and after his death she may have a *Quod ei deforceat*.

C H A P. XIV.

Attornment.

What Act of the Husband or Wife shall amount to an Attornment. Avowry for Rent out of the Wife's Land in whose Name it ought to be. When and to what purposes a Feme Covert shall be a Disseisor without her proper Act or Entry, and where, and to what not. What Act of the Husband shall be a Discontinuance of the Land of the Wife, and what not. What was a Discontinuance at the Common Law. Where a Discontinuance cast during the Coverture shall toll the Liability of the Wife or not.

I Have considered what alterations have been made by Intermarriage, as to Estates, Leases, Chances, Actions, and what things of the wife accrue to the husband by the Intermarriage, and what Chances, Acts or Forfeitures made by the husband bind the wife or not after his death. The next Reflection shall be briefly of such Titles, as concern Real Actions or Estates, as, Attornment, Disseisin, Remainder and the like.

If a Feme grant a Reversion to a Man in Fee, and marry the Grantee, the Lessee attorns to the husband, this is a good Attornment in Law to the husband, 1 *Inst.* 320.

If a Feme sole make a Lease for Life or Years, reserving Rent, and granteth the Reversion in Fee, and taketh husband, this is a Countermand of the Attornment, 1 *Inst.* 310. b.

If there be Lord and Tenant, and the Tenant taketh a wife, and after the Lord grants the Service to the wife and her Heirs, and the husband accepteth the Deed, in this Case after the death of the husband the wife and her Heirs shall have the Services, &c. for by acceptance of the Deed by the husband, this is a good Attornment, &c. albeit during the Coverture the Services shall be put in suspension, *Lit. Sect. 559.*

A Feme Covert is compellable to attorn, 1 *Rolls Abr.* 296.

If the husband accept the Grant of a Reversion, this shall amount to an Attornment, 10 *Co.* 52. *Lampet's Case.*

A Feme may be Attorney to deliver Seisin to her husband, and the husband to the wife, 1 *Inst.* 52.

Avowry, Vide Rent.

If the husband be seised of a Seigniorie in the Right of his wife, Conifance ought not to be made of Rent as Bailiff to the husband alone, but as Bailiff to them both, 12 *R.* 2. *Avowry* 88. *Contra* 14 *H.* 4. *Avowry* 198.

If Lessee for years be, rendring Rent, and the Reversion descend upon a Feme Covert, and after the Rent is arrear, and the Baron distrains, and the Lessee brought Replevin; the husband ought to avow in the name of himself and his wife, and not in the name of himself alone; for the Avowry is to be made according to the Reversion, which is in the wife, 1 *Rolls Abr.* 318. *Wife and Bennet.*

Avowry to be made in the name of Baron and Feme.

In Replevin Def. ut Ballivus H. & A. uxoris ejus cognovit, &c. Quod ante, &c. Willielmus S. fuit seignior de septem acris pasturæ cum pertin. in D. unde locus est parcella in dominico suo ut de feodo & tenuit de prad. H. & A. ut de Manerio suo de D. in Com. prad. per fidelitatem & reddit. 3 d. ad Festum &c.

Et c. Necnon per servitium fact. sect. ad Curiam de quo quidem Manerio Quidam R. W. fuit seisin in feodo, & sic seistus per nomen, &c. per quodam scriptum suum indentat. gerent. dat. tali & anno seoffavit quendam R. S. & præd' A. uxorem ejus de eodem Manerio habend' & tenuit pro termino vitæ naturalis ipsius A. ad quod quilibet seoffamentum præd' tenens postea & ante, &c. apud præd' se iisdem R. S. attornavit Quorum prædictorum R. & A. fuer' seistii de Manerio prædicto pertinent' in dominico suo &c. pro termino vitæ ipsius A. Ipsisque sic seistii præd. R. obiit ac prædicta A. ipsum supervixit, & se tenuit intus ac fuit sola seistita in dominico suo ut de libero tenens pro termino vitæ suæ. Et sic seistii percipit prædicta H. per quod, &c. de quibus servitiis prædicti seistii per manus & in jure ipsius A. & sic vivit pro redditu. Ex Manuscript. Mri. Brown. Trin. 19 Eliz. Rot. 543.

Where and to what purposes a Feme Covert shall be said a Dissefeors without her proper Act or law, and where and to what not.

Regula.

It is regularly true, a Feme Covert cannot be a Dissefeors by her Commandment or Procurement precedent, or by her Assent or Agreement subsequent but by her actual Entry or proper Act she may, *Inst.* 357. b. and yet if she be of Covin and consents with her husband to a Disseisin, she is a Disseisin and consequently shall not be remitted.

But it is universally true, a Feme Covert shall not be a Dissefeors by the Act of the husband, as if the husband disseise another to the use of the wife the wife is not a Dissefeors by this Act, 12 E. 4. 4. So it is though she agree during the Coverture, or her Agreement is void; or if both agree, she is not a Dissefeors (unless Covin be in the Case.) But

after the death of the husband she agree to the Disseisin she shall be a Disseisorefs.

If Baron and Feme enter into Land in the right of the wife where she had not Right, the Feme is no Disseisorefs, for it shall be taken to be the Act of the husband only.

A Feme Covert cannot make a Disseisin to the use of her husband, 8 H. 6. 14. b. *Curia*. For although she gain an Estate by her Entry, yet she had not power to dispose of it to another, being Covert, as she ought, if she makes a Disseisin to the use of another; but *contra* 21 H. 7. 35. So a Feme Covert cannot disseise a Man to the use of a Stranger.

Feme Covert cannot make a Disseisin to the use of the husband.

If a Man take a Distress for Rent issuing out of the Land of a Feme Covert, and the Baron and Feme make Rescous, they both are Disseisors, 21 E. 4. 53.

If the husband discontinue the Land of his wife, the wife being in possession and disagreeing to the Feoffment claiming her first Estate, she is a Disseisorefs.

Note, If the husband disseised one to the use of his wife, no Agreement of the wife shall be laid to the Disseisin, for that she cannot disagree during Coverture, *Ex Manuscript. Mri. Brownloe.*

Note, In *Trespas ad novam assignationem* Def. placitat liberum Tenementum ipsius Def. & E. uxoris ejus in jure, &c. Ad quod Quer. dicit quod ipse fuit seistus quousque disseisus per le Baron ad usum uxoris per quod fuer' seisit. per disseisinam, & quod disseisee re-enter & Tresp' null' faciend' mencionem de agreement del feme al disseisinam Quere car aliter d'estranger, Def. maintain son Freehold & Traverse le disseisin, *Ex Manuscript. Mri. Brownloe.*

Discontinuance.

Where and what Act by the Husband was a Discontinuance of the Land of the Wife at Common Law, and what shall be a Discontinuance, and what not.

If a Man be seised of Lands in the Right of the wife in Fee Tail or for Life, and thereof give another, and dieth, the wife may not enter, but may bring her Action, which is called a *Cui in vita*, or *Sur cui in vita*, for the Heir; this was at Common Law before the Statute of 32 H. 8. c. 28.

*Stat. 32 H. 8.
cap. 28.*

In what cases
the Wife may
enter after the
Discontinu-
ance of the
Action.

But now by that Statute the wife and her Heir after the death of her husband may enter into the Lands or Tenements of his wife notwithstanding the Alienation of the husband.

So it is where the husband and wife are jointly seised to them and their Heirs of an Estate in Fee during the Coverture, and the husband makes a Feoffment in Fee and dieth, the wife may now enter by that Statute, although it was the Inheritance of both. So it is if the Feoffment be made by the Baron and Feme (albeit the Words of the Statute be by the Baron only) for in substance this is the Land of the husband only. If Lands be given to the husband and Feme, and the Heirs of their two Bodies, and the husband makes a Feoffment in Fee, and dieth, the wife is holpen by the said Statute.

*Stat. 32 H. 8.
helps the Dis-
continuance,
but not the
Bar.*

But note, If the husband levy a Fine with Proclamations and dies, the wife must enter or avoid the Estate of the Conisee within five years, or else she is barred for ever by the Statute of 4 H. 7. For the Statute of 32 H. 8. doth help the Discontinuance, but not the Bar; and the Statute speaketh of a Feoffment, but not of a Fine with Proclamations, 1 *Inst.* 326.

Note, Of things that lie in Grant, as, Rents, Commons, &c. there can be no Discontinuance.

J. B. and *Jane* his wife, being seised of Land to them and the Heirs of the Body of *J. B.* the Remainder to *Ed. B.* and the Heirs of his Body, the Remainder to *W. B.* in Tail, the Remainder to *G. Edwards* in Tail, the Remainder to the right Heirs of *J. B.* *J. B.* and his wife, and *W. B.* the third in Remainder, joyned in a Feoffment with Warranty to *M. K.* and after the said Baron and Feme levied a Fine to *M. K.* 1. Whether the Feoffment be a Discontinuance of the Estate Tail? *Per Curiam*, It is a Discontinuance, and the joining of *William* does not hinder a Discontinuance, because there is an intermediate Estate Tail in *Edward*, which is discontinued. 2. This Feoffment and Fine to the same person make but one Assurance; and when the wife is barred and her Estate destroyed by the Fine that she cannot enter, those in Remainder cannot enter but are as at Common Law, *Cro. Car.* 321. *King* and *Edwards*.

What is a Discontinuance.

As to the Remainder.

If a woman Inheritrix, who hath a husband within Age, and he being within Age makes a Feoffment in Fee and dies, she may enter, and she shall take benefit of the Non-age of the husband; for the Heir of the Husband cannot enter, for no Right or Title descends to him.

The Wife may enter after her Husband dies in Nonage.

A Baron seised of Land in the Right of his wife makes a Feoffment in Fee upon Condition and dies; if the Heir enter upon the Feoffee for the Condition broken (as he may;) for though no Right descended to the Heir, yet the Title of Entry by force of the Condition descends to him: The Entry of the wife is congeable upon the Heir, for by his Entry he hath avoided the Feoffment and so defeated the Discontinuance, and his Estate vanishes, and the Estate vesteth in the wife without Entry or Claim.

Discontinuance being defeated by the Entry of the Heir for Condition broken.

Discontinu-
ance or not
by the Agree-
ment of the
wife.

If Baron and Feme make a Lease for Life by Deed of Lands of the wife, if the Feme after the death of the Baron, agrees, it is no Discontinuance; but if she disagree, it is a Discontinuance, *Cra. Ca.* 406.

What is not
a Discontin-
uance.

If a Man seised in the Right of his wife, let the same Land to another for Term of his Life, and the husband hath again the Reversion of the Fee simple; if the husband dyes, living the wife and the Tenant for Life, and the Reversion descend to the Heir of the Baron, and he grant the Reversion to another in Fee, and the Tenant attorns, and the Tenant for Life dies, and the Grantee of the Reversion enter, this is no Discontinuance to the wife, but she may well enter upon the Grantee, because the Grantor had nothing at the time of the Grant in the Right of the wife when he made the Grant of the Reversion, *Lit. sect.* 639. But if the Baron and Feme in such case join in a Lease by Deed, the Reversion is not discontinued, but remains in the wife, and yet it was at Common Law a Discontinuance for Life.

What is a Dis-
continuance,
and of the
Husbands be-
ing seised by
force of the
Tail.

If Baron and Feme, Tenants in special Tail, and the husband aliens in Fee, this is a Discontinuance of the Tail, for he is seised of all incidents, *8 Co.* 71. *Greenloes Case.*

But if the husband be seised of Land in the Right of the wife in Tail, and alien in Fee, this is not a Discontinuance of the Tail, for he is not seised by force of the Entail, *1 Inst.* 326.

Plead.

If Lands are given to Baron and Feme, and to the Heirs of the Body of the Baron, and the husband makes a Feoffment in Fee, this is a Discontinuance for the husband is seised by force of the Tail, and so it shall be pleaded, *9 Car. B. R. King and Edwards.*

If Tenant for Life be, the Remainder in Tail, and he in the Remainder enter upon the Lessee and dis-
seise

seiseth him and makes a Feoffment over, this is not any Discontindance, because he is not seised by force of the Tail, *Trin. 2 Jac. B. Morlidge and White.*

But if the Lessee for years be, the Remainder in Tail to J. S. and J. S. enter upon the Lessee and makes a Lease for Life, or Feoffment in Fee, this is a Discontinuance, for he was seised by force of the Tail at the time of the Feoffment, *Pascb. 11 Jac. B. R. Sir Kenelm Digby and Jordan.*

If Baron seised of a Copyhold in the Right of the wife surrender it to the use of another in Fee, who is admitted accordingly, this is not any Discontinuance to the wife, *4 Co. 23. Bullock and Dibley.* Copyhold.

The husband discontinues, and the wife is attainted, the King shall have the Right of the Entry, *Hob. 241, 243.*

Descents.

Where a Descent cast during the Coverture shall toll the Entry of the Feme, and where not.

If a Feme sole be seised of Lands in Fee, and is disfeised, and then taketh husband, in this Case the Baron and Feme as in Right of the Feme, have Right to enter, and yet the dying seised of the Disfeisor in that Case shall take away the Entry of the wife after the death of the husband, because when she was sole she might have entred and recontinued the Possession; and it shall be accounted her Folly, that she would take such an husband which would not enter before the Descent: But there if the woman were within Age at the time of her taking husband, then the dying seised shall not after the death of the Baron take away her Entry, because no Folly can be accounted in her, she being within Age when she took husband, and after Coverture she cannot enter without her husband.

Where a Descent cast during the Coverture shall toll the Entry of the wife, and where not.

And if the Baron and Feme *in droit* of the wife have Right and Title to enter into Lands which another hath in Fee or Tail, and such Tenant die seised, the Entry of the husband is taken away upon the Heir which is in by Descent : But if the husband die the wife may well enter upon the Heir, for that no Latchets of the husband shall turn to the prejudice of the wife or her Heirs, 1 *Inst.* 246. *a. b.* and so is 9 *H.7.* 24. Disseisee goes beyond Sea, or marries where a Descent is cast during the Coverture or absence, this shall bind, because it was a default to go away when he was disseised.

Where Entry of Disseisee is congeable upon the Wife of the Disseisor after Endowment notwithstanding the Descent.

If a Disseisor die seised, and his Heir enter, who endows the wife of the Disseisor of a third part of the Land, as to the part assigned in Dower present after the wife entreteth thereinto, the Disseisor may lawfully enter upon the Possession of the wife in the said part, because when the wife hath her Dower she shall be adjudged in immediately by husband, and by the Heir ; and as to that the Descent is defeated, and she is in by a Title paramount the Descent dying seised, 1 *Inst.* 240, 241.

C H A P. XV.

Remitter.

The Nature and Reason of Remitter. What Act shall be a Remitter to the Wife. Remitter wrought by a voidable Estate. Remainder expectant on an Estate for Life works no Remitter. Notwithstanding what Acts and Alienations by the husband the Wife shall be remitted. Of Remitter by Acceptance. Where the Wife being remitted during the Coverture may after the death of her Husband waive the Remitter, and where not. No Disagreement of the Husband shall devest the Remitter, and the Reason. Where a Warranty descending on an Infant or a Feme Covert shall be a Bar, and where not. Where the Baron and Feme shall be Joyn tenants; and where by Interties, and where by Moieties, with several Cases to illustrate that curious Learning; and how it was at Common Law, and how it is now by the Statute of Uses.

BARON and FEME Tenants in special Tail with Remainder over, the Baron discontinues by Fine or Feoffment, and then takes an Estate back to himself and his wife in special Tail, by this the wife is *ipso facto* remitted. Where the Wife is remitted.

Tenant in Tail before the Statute of 27 H. 8. made a Feoffment in Fee to the use of his wife for Life, and after to his Son and Heir in Fee; then the Statute is made and the Baron and Feme are dead, the Issue shall not be admitted, and this for the violation of the Letter of 27 H. 8. So if a Feme having Right of Lands discontinued where his Entry was not lawful, if she come to that Land by way

Explication of the Statutes of 27 H. 8. and 32 H. 8.

of an Use raised out of that Estate, she shall not be remitted, for she must be in of the Estate, as she was of the Use; but now by the Statute of 32 H. 8. it hath changed the Reason of this Case, which hath given the wife Entry against her husband's Fine; so that now by the Use raised to her out of such Estate, she is not in of an Estate discontinued, but of an Estate whereupon after the death of her husband she might have re-entred. Now as upon Re-entry in such Case where the Entry is lawful, she is remitted; so where an Estate is conveyed to her, and is in her, though by the Statute her Entry being lawful, she shall be adjudged in of her best Estate, her Remitter being *Intratio legitima*, though not *actualis*, *Hil.* 255, 256.

Where the Baron discontinues and re-takes to himself and Wife, the Wife is remitted.

A woman seised of Land in Fee taketh husband, who aliens the same Land to another in Fee, the Alienee lets the same Land to the Baron and Feme for Term of their Lives, she is remitted, though it be by Deed indented; and though there are no Moyeties between Baron and Feme, yet this is a Remitter presently: So Estate granted by Intermuage may be sufficient Estate to gain a Remitter as well as an Estate made to Baron and Feme shall win a Remitter; and she is remitted in the Life of the Discontinuor, because she hath a present Right, but not so of the Issue in Tail.

Issue in Tail of full Age takes Husband, a Lease to her and her Husband by the Discontinuor shall be a Remitter.

Tenant in Tail discontinues the Tail and hath issue a Daughter and dies, the Daughter being of full Age taketh Baron, and the Discontinuor makes a Release of this to Baron and Feme for their Lives, this is a Remitter to the wife, and the wife is in by force of the Tail, *Lit. Sess.* 671.

A woman seised of Land in Fee takes husband, who aliens the same Land to another in Fee (and though it be by Fine) yet that shall not hinder the Remitter, because a Feme Covert is not to be examined upon any Fine: But when she and her husband

band pass some Estate or Interest or release her Right by a Fine of Lands or Tenements; and therefore if the husband levy a Fine of the wifes Land, and the Conisee grant and render the Land to the husband and wife, although the wife be not party to the Original, nor to the Conifance, and therefore cannot take any present Estate, but by Remainder only, yet it works a Remitter, and the Grant and Render is not void, but voidable only by Error, 1 *Inst.* 353.

If the Baron discontinues the Land of his wife, and after takes back an Estate to him and his wife and to a third person for their Lives, or in Fee, this is only a Remitter to the wife for a Moiety; and for the other she must have a *Cui in vita*, and his Disagreement shall not develt her of Remitter, 1 *Inst.* 356.

Land is given to Baron and Feme in special Tail, the Baron aliens the Land in Fee, and takes back an Estate to him and his wife for Term of their Lives, this is a Remitter to the Baron and Feme maugre the husband, for they are one person in Law; and it cannot be a Remitter to the wife unless it be a Remitter to the Baron.

The Baron discontinues the Land of his wife, and the Discontinuee is disseised, and after the Disseisor lets the same Lands to husband and wife for Term of Life, this is a Remitter to the wife, except she were covenous to the Disseisor: If such Discontinuee make an Estate of Freehold to the husband and wife by Deed indented on Condition rendring Rent, and for default of Payment, a Re-entry; and because the Rent is behind the Discontinuee enters, then for this Entry the wife shall have an Assise of *Novel Disseisin* after the death of the Baron against the Discontinuee, because the Condition is defeated, yet the husband with his wife cannot have an Assise, because the Baron is Estopped, *Lit. Sect.* 769.

Where upon a Discontinuance by the Baron by Fine a Grant and Render to the Wife shall be a Remitter to her. Remitter wrought by a voidable Estate.

Remitter for a Moiety.

Remitter to Husband and Wife maugre the Husband.

And

Remainder
expectant on
Estate for Life
worketh no
Remitter.

And if the Baron discontinue the Tenement
his wife, and takes back an Estate to him for
the Remainder to his wife for Life, this is no Rem-
ter to her till after his decease, because during
Life she hath nothing in the Freehold, *Str. 616.*

Baron and Feme Tenants in special Tail upon
chase of the Baron they have Issue two Sons: If
husband makes a Feoffment to the use of himself
Life, the Remainder to the wife for his Life, the
mainder to the second Son and his Heirs; the
dies, the Feme enters and makes a Feoffment to
Issue of the second Son, and the eldest enters for

Heir remitted
by the Entry
of the Feme.

Forfeiture within the Statute of 11 H. 7. His
is congeable, and this Feoffment by the wife (tho
it be to him who had the Reversion in Fee) is a
feiture within the Statute; for by the Entry of
wife he was remitted, *Sid. 63. Jones and Phil.*

Remainders
remitted.

If Baron and Feme are Tenants in special
and the Baron only levies a Fine to the use of
self and his wife for Life, though the Entail be
red as to the Baron and the Issues, yet the wife is
mitted to the Estate Tail, as she should have been
an Entry after her husband's death, and the Rem-
ders, which were depending upon that Estate
are likewise remitted, *Hob. 257, 259. Duncanson
Wingfield.*

Wife remit-
ted upon a
Writ of En-
try in the
Post.

If a Man seized in the Right of his wife make
Lease for Life, the Remainder over in Fee, and
he and his wife recover the same Land by a Writ
Entry in the *Post* against the Lessee for Life:
Dyer, the wife shall be remitted as well as when
Recovery is made to Baron and Feme, for the
covery countervails a Feoffment, *Quare*, if she
not be estopped by the Record, *More 32.*

The Baron discontinues the Land of his Feme
Fee to the use of him and his wife for Life, and
Remainder over and dies, the wife enters, but is
not remitted, notwithstanding that the *Post*

was transferred to her use by the Statute of Uses, because the Statute saith, he shall have possession Where the Use makes no Remitter, so neither the Possession transferred to it, *Plowd. Amy Townsend.*

Remitter by Acceptance.

Trin. 15 Jac. Rot. 988, Duncomb's Case, Baron leases a Fine of the Land of his wife and dies, the wife accepts a Lease for years of the same Land, and resolved it was a Remitter, *Dyer 171. in Margine.*

Where the Wife being remitted during the Coverture may after the death of her Baron waive her Remitter, and where not.

The Law shall adjudge the wife in of her better Estate, as by the Cases foregoing may abundantly appear: But if both Estates be waveable, there albeit the wife is *prima facie* remitted, yet after the death of her husband she may elect which of the Estates she will. As if Lands are given to Baron and Ferne and their Heirs; the Baron makes a Feoffment in Fee, the Feoffee gives the Land to the Baron and Ferne, and the Heirs of their two Bodies, the Baron dies; in this Case the wife may elect which of the Estates she will, *1 Inst. 357.*

So is *Hobbs 71. Sheerly and Wood's Case*, which was this:

Downing Sir *H. B.* The Tenant pleaded, that Sir *H. B.* was seised in Fee of the Lands, &c. and made a Feoffment thereof to the use of himself and the Demandant *D.* for the Term of their Lives for her Jointure, the Remainder over to *B.* Sir *H. B.* died, and the Ferne entred claiming it for her Jointure. The Plaintiff replied, that the said Sir *H. B.* before this Feoffment did covenant to stand seised to the use of him-

himself in Tail, the Remainder to his wife for Term of Life, the Remainder to *H.* in Tail, after made the Feoffment *prout*, and then died Issue, and she entred, and was remitted claiming Estate by Indenture. The Tenant rejoins, That Feme after the death of her Baron entred claiming her Estate for Life by the Feoffment, and demands

Possession and Right must meet.

1. *Per Curiam*, The Remitter to the husband must not work till her husband was dead *sans issue*, for cause till then the Possession and Right did not meet in her.

Where the Feme shall be in her Remitter *Nolens volens*.

2. Because both the Estates were made during the Coverture, regularly after the death of her husband she might claim which Estate she would yet in this Case she shall be in her Remitter *volens*, for the benefit of him in Remainder by first Conveyance, *Hob. 71. 255. Wood and Shute* and affirmed in a Writ of Error, *Cro. Jac. 40.*

If a Feme Covert be Tenant for Life, and her Baron and Feme accept of a greater Estate than she has in the Reversion, yet after the death of her husband she may waive it, and claim her first Estate for Life. 2 *Sand. 386.*

A. seised of Land *in jure uxoris* for her Life, and made a Feoffment in Fee to the use of his wife for Life, the wife is remitted, and is not like *Amy Totenham's* Case, where the Entry of the wife was not barred, for she was Tenant in Tail, which Estate was continued by the Feoffment of the Baron. *Sydenham's* Case was: *B.* seised *in jure uxoris* for Term for the Life of the wife: they both survived, and took back the Lands to them and a third son, it was held that the wife was not preferred, remitted, but after the death of the Baron she claimed disagree to the Estate, 3 *Leon. 93.*

Of Disagreement by the Baron.

No Disagreement of the husband shall devert the Remitter.

1. Because the Estate made to the wife which wrought the Remitter is vanished and defeated.

2. Because she is restored to her ancient and better Right.

3. Remitters tend to the Advancement of ancient Rights.

Where a Warranty descending on an Infant or a Feme Covert shall be a Bar, and where not.

Where the Entry of a Feme Covert or Infant is not lawful when the Warranty descendeth on her during the Coverture, the Warranty doth bind them and her; and the reason is, because the Estate whereof the Warranty is annexed continueth, and cannot be avoided but by Action in which the Warranty is a Bar.

The Father Tenant for Life, the Remainder to his Daughter and Heir apparent (a Feme Covert) in Fee; the Father makes a Feoffment to divers Uses with Warranty, and after levies a Fine with Warranty and dies, the Daughter by consent of her husband enters within the year after the Fine claiming the Land as her Inheritance, the Entry by the Feme only by consent of the husband is good, and the Warranty descending upon her during the Coverture, where her Entry is congeable doth not bind her, neither doth it bind the husband, because it descends not upon him, and being void to bind her shall not bind him, *Cro. Eliz. p. 72. Ardes and Symson.*

Where the Warranty of the Baron being Tenant by the Courtesie, shall be a Bar to the Issue of the Wife, and where not. Where the Feme shall vouch her Husband.

If the husband be seised of Lands in the Right of his wife, and makes a Feoffment in Fee with Warranty, the husband dies, this Warranty shall bind the Heir of the wife without Assets, though the husband be not Tenant by the Courtesie, 1 R. 366.

If a Man infeoff a Woman with Warranty, they intermarry and are impleaded; upon the death of the husband the wife is received, she shall vouch her husband notwithstanding the Warranty was put in suspension; and so on the other side, If a Woman infeoff a Man with Warranty, and they intermarry and are impleaded, the Baron shall vouch his wife and his wife by force of the said Warranty, 1 R. 390. a.

Where Baron and Feme shall take by Intierities, where by Moieties.

Baron and Feme cannot take by Moieties during the Coverture.

Baron and Feme are Jointenants, and after they intermarry, they shall take by Moieties; but if Lands be given to them after Marriage, they take by Intierities for Baron and Feme cannot take by Moieties during the Coverture. I let Lands to a Feme sole for her Life, who marries, and afterwards I confirm the Estate of the Baron and Feme, *Habendum* for the term of their Lives; the husband doth not hold the Land with his wife, but holdeth in the Right of his wife for Term of her Life, *causa qua supra*: 1. Because the wife hath the whole for her Life. 2. Jointenants must come in by one Title. But if I let Lands to a Feme sole for Term of years, who taketh husband and after I confirm the Estate of the husband and wife, to have and to hold the Land for the term of their two Lives; in this Case they have a joint state of Freehold of the Land, for that the husband had no Freehold before; so the same Law is of a lease in both Cases, and the Chattle of the Feme.

Covert is drowned : But if Land is let to a Feme sole for Life, who marries, and a Confirmation is made to the Baron and Feme, they are Jointenants of the Fee-simple, and the husband seised in the Right of his wife for her Life, for the Baron and Feme cannot take by Moieties during the Coverture.

If a Man letteth Land to the husband and wife, *Habendum* the one Moiety to the husband for Term of his Life, and the other Moiety to the wife for the Term of her Life, and the Lessor confirms the Estate of both in the Land ; *Habendum* to them and their Heirs ; by this Confirmation as to the Moiety of the husband, it inureth to the husband only and his Heirs, for the wife had nothing in that Moiety : But as to the Moiety of the wife they are Jointenants, for the husband hath such an Estate in his wives Moiety in her Right as is capable of a Confirmation, 1 *Inst.* 299.

There are no Moieties between Baron and Feme. If Tenants in Tail enfeoff a Woman in Fee and dies, and the Issue within Age taketh the same Woman to wife, this is a Remitter to the Infant within Age, and the wife then has nothing, for that the husband and wife are one person in Law, and therefore the Land cannot be parted by Moieties. But if an Estate be made to a Man and a Woman and their Heirs before Marriage, and after they marry, the husband and wife have Moieties between them.

If Lands are given to two Men and a Woman in Fee, and afterwards one of them intermarries with the Woman, and alieneth Land and dieth, in this Case the wife hath Right but to a third part ; but if the Man and the Woman had been married before the first Feoffment, then the Woman notwithstanding the Alienation of her husband had Right to Moiety of the Land.

Baron

Baron and Feme and a third Person purchase Lands jointly.

A Joint Estate is made to Baron and Feme and a third person, or to Baron and Feme and to two other persons.

Baron a Feme and third person purchase Land jointly, the Baron aliened the whole, he and his wife died, the third Survivor shall have Affise of all, *Baron and Feme* p. 3. for all survives to the third person; for the Jointenancy was not severed by the Alienation of the husband, for the wife and the third person may join in a Writ of Right, 31 H. 6. Entry Caseable 54.

A Joint Estate of Land is made to Baron and Feme, and to a third person, in this Case the Baron and Feme have in Law but a Moiety, and the third person shall have the other Moiety, for there are but one person in Law. The same Law is when an Estate is made to the Baron and Feme and two other Men, in this Case the Baron and Feme have but a third part, and the other two Men the other two parts.

At Common Law, if Land had been given to a Baron and Feme and a third person, and to their Heirs, and the Baron had made a Feoffment in his Life, this had been a Discontinuance of the one Moiety, and a Disseisin of the other Moiety, so as after the death of the Baron the wife hath a Right of Entry for one Moiety, and the other Jointenant may have Entry into the other.

A Feoffment is made before the Statute of 8. to the use of a Man and a Woman, and to their Heirs of their two Bodies, and they intermarry, after Marriage the husband sells the entire Land, and dies *sans* Issue, and after the Statute of 27 Ed. 1. was made the wife claims the Entry by Survivorship as Tenant in Tail after Possibility, &c. *Per Curiam*. She shall have but a Moiety by reason of the Jointenancy before Marriage; but the Issue, if any, shall have a *Formedon* of the whole, *Plowd.* 1. Co. 102. b. 4. *Leon.* 198. 10 Co. 68, 102. 66.

Tenant in Tail enfeoffs a Woman in Fee and dies, and his Issue within Age taketh the same Woman to wife, this is a Remitter to the Infant; and the wife hath nothing, for that the Baron and Feme are one person in Law, and then if the Heir be in Remitter by force of the Tail, then it follows, that the wife hath nothing because the Land cannot be parted by Moieties, and the Freehold and Inheritance of the wife is vanished clear away, *Lit. Sect. 665*.

Of Land recovered in value during the Coverture there shall not be Moieties, although they had Moieties in the Land recovered against them, *Plowd. 183*.

If a Feoffment be made to a Man and a Woman and to their Heirs with Warranty, and they intermarry, and after are impleaded, and vouch and recover in value, Moieties shall not be between them; for though they were sole when the Warranty was made, yet at the time when they recovered and had Execution they were Baron and Feme, in which time they cannot take by Moieties.

A Man gives Land by his Will to his wife for Life and dies; his wife marries B. the Heir of the Devisor by Deed inrolled sells the said Lands to Baron and Feme, *Habendum* to them, their Heirs and Assigns to their own use, and then the wife had Issue, a Son (who was by the Will to be Christened by such a Name) this by this Conveyance made by the Brother and Heir of the Devisor before the Birth of the Son hath destroyed the contingent Remainder; and the Baron and Feme took by Interties, and the Estate for Life in the wife in the entire Tenancy was emerged, *2 Sand. 386*.

Lands are given to A. B. and C. D. a Feme, and the Heirs of the Body of A. B. A. B. and C. D. intermarry, the Baron suffers a Common Recovery against himself only without naming his wife, the Recovery is falsified for one Moiety, because the wife, who was Jointenant with A. B. was not named and

Of Land recovered in value during the Coverture no Moieties.

Where they taketh by Interties.

Where a Recovery binds not the Wife's Moiety.

party to the Recovery: This Recovery binds not the Moieties of the wife, Lord Norris's Case, 1 Leon. 373 Co.

Copyhold Lands are surrendered to the use of the wife for Life, the Remainder to the use of the right Heirs of the husband and wife, the husband enters in the Right of the wife: *Per Curiam*, The Remainder was executed for a Moiety presently in the wife, and the husband of that was seised in the Right of his wife, and the wife dying first, her Heir should have had one Moiety, 3 Leon. p. 4.

Where the Heir shall only have a Moiety.

Attornment.

Where Baron and Feme and a Stranger are Jointenants, the sole Alienation of the Baron shall bar the Stranger surviving, and where not.

A Reversion is granted to a Man and a Woman, and their Heirs, and before Attornment they intermarry, and then Attornment is made, in this Case the Baron and Feme have no Moieties. So in the Case of a Letter of Attorney to make Livery.

If a Feoffment were made before the Statute 27 H. 8. *Of Uses*, to the use of a Man and a Woman, and their Heirs, and they intermarry, and then the Statute is made; if the husband alien it is good for a Moiety, for the Statute executes a Possession according to such quality, manner, form and condition as they had in the Use; so as though it veiling the Coverture, yet the Act of Parliament executes several Moieties in them, seeing they had several Moieties in the Use, 1 Inst. 187 b.

By Attornment they shall have no Moiety.

If the Reversion be granted to a Man and a Woman, they are to have Moieties in Law, but if they intermarry and then Attornment is had, they shall have no Moieties, because it is by Act of Law, and by the purport of the Grant they were to have Moieties, 1 Inst. 310. a.

Difference between joint Alienations and several.

If two Femmes be jointly seised, and they take husbands, and the husbands join in an Alienation and dye, the wives are Jointenants of the Right, and may join in a Writ of Right, or they may have several *Cui in vita's* at Election; but when they have recovered

recovered in those several Writs they shall be Jointenants again: But if the husband had aliened severally, this had been a Severance of the Jointure for a time.

If a Man make a Feoffment in Fee to the use of himself and of such wife as he should afterwards marry, for Term of their Lives, and afterwards he taketh wife, they are Jointenants, and yet they come to their Estate at several times, 1 *Inst.* 188. a.

If a Feme Covert and *J. S.* are Jointenants for Life of a Copyhold, and *J. S.* surrenders his Moiety to the husband this is a severance of the Jointure, so that he is Tenant in Common with his wife, 14 *Jac. Law and Pannel.*

What is a Severance of the Jointure.

If a Feme Covert and *J. S.* are Jointenants for Life, and the Baron and Feme by Indenture let the Moiety of the wife for years rendring Rent, and after the wife dies, the Survivor shall not avoid this Lease, because this was and is the Lease of the wife *prima facie* till she disagree to it, and only avoidable, and the Survivor is not privy to her to avoid it, for the Lease was an actual Severance during the years, 14 *Jac. Rolls Rep. Smalman and Ayborough.*

Lease an actual Severance.

Baron and Feme and a third person purchase Land to them and the Heirs of the husband, and the third person releaseth to the Baron all his Right, &c. without the word *Heirs*, and afterwards the Baron and Feme make a Lease of all for years rendring Rent to them and the Heirs of the Baron; the Baron dies, the Heir shall have the Moiety of the Rent after the death of the Baron, and a Release to the husband only shall enure to him sole and not to the wife, *Dyer* 163.

Where a Release shall enure to the Husband sole and not to the Wife.

C H A P. XVI.

Conveyances.

What shall be said to be the Deed of the Husband and Wife. Of a Feoffment by the Husband of the Wifes Land. Where the Wifes Grant, if she join with her Husband, is void or not. Surrender by the Husband how it operates. What shall amount to a Surrender or not. Of a Release of the Husband of the Wifes Right to rent. Of the Release of Money to be paid after the Wifes Death. Of Exchanges of the Land of the Wife, and what shall be a good Confirmation of it by the Wife. How a Man may execute an Estate to his Wife. Of the Christian Names of Women in Grants.

What shall be said to be the Deed of the Husband and Wife.

DEbt on a Bond conditioned for the performance of Covenants in an Indenture made between S. and Anne his wife of the one part, and the Plaintiff on the other. The Defendant pleads the Indenture as an Indenture of W. S. and Anne his wife, whereas in truth the Feme never sealed it. The Plaintiff replies, That the Indenture shewed by the Defendant *non fuit facta inter W. S. and Anne* his wife on the one part, and the Plaintiff on the other. The Jury find the Baron sealed it, but the wife did not: This Verdict is found against the Defendant, who pleaded it as the Deed of the wife; and *per Curiam* the Plaintiff is not estopped to say, that the Deed shewed is not the Deed of the Baron and Feme; but he is estopped by the Condition to say, there is not any such Indenture. But if the Baron had sealed and delivered it in the Name of the Feme it had been the Deed of the wife during the Life of the husband; and if they by Indenture bargained

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and sold the Land of the wife rendring Rent, it had been a good Deed of the Femer, because she afterwards might have accepted the Rent, and affirmed it as her Deed: And Judgment was pro
Quer. Cro. Eliz. 269. Ship and Steed.

Feoffment.

Baron and Feme make a Feoffment of the wives jointure, which she had by a former husband, to one and his Heirs to the use of Feoffee for the Life of the wife, this is a Forfeiture, for by the Feoffment the Fee-simple passeth, and that to the use of the Feoffor; and the Estate and the Use are several things, and the Limitation for the Life of the wife cannot extend to both, 1 *Leon. p. 126. Pierce and Hu.*

Baron and Feme join in a Feoffment of the wives Land rendring Rent; the husband dies, the Feme takes a new husband before any Rent day, the second husband accepteth the Rent, the Feoffment is affirmed for ever. By acceptance of the Rent the Feoffment is affirmed.

If a Feme sole make a Feoffment on Condition to re-ineoff her at what time she will, and after takes husband, she may require the Feoffee to re-ineoff her without her husband, and if the Feoffee refuse to do it, the Condition is broken. Feme Covert may request a Re-ineoffment without her Husband.

Where Baron and Feme Infants join in a Feoffment by Indenture, the Feme after the death of her husband may have a *Dum fuit infra aetatem*; *secus* where her self was of full Age at the time of the Feoffment, for there she shall not have a *Dum fuit infra aetatem*, for the Nonage of her husband, albeit they be but one person in Law, 1 *Inst. 337. a.* *Dum fuit infra aetatem.*

Baron seised in Fee makes a Feoffment to the use of himself and his wife, and to the Heirs of the Survivor of them, and afterwards makes a Feoffment of the same Land, and dies, the Feme enters, Feoffment of the Husband destroys a Contingent Use.

in this Case the Feoffment of the Husband hath destroyed the Contingent Use of the wife, *Cro. Car.* 102.

Sale of Land in Equity is the Sale of the Husband alone, though the Wife received the Money.

One being enfeoffed to the use of a Feme Sole, she takes an husband who sells the Land to a Stranger, the Feme received the Money, the husband and wife pray him, that was enfeoffed to the use of the wife, to make an Estate to a Stranger, this Sale in Equity ought to be construed the Sale of the husband alone, and it shall be not esteemed that the wife did it, for the Deed of the Baron and the Receipt of the Money by her is not material, because she cannot have the free disposal.

By the Grant of *totum jus suum* what passeth.

One being possessor of a Lease of Tithes in the Right of his wife, as Executrix to her former husband, grants *totum jus, titulum & interesse suum de & in decimis prædictis*. Verdict was *pro Quer.* who claimed under the said Grant. It was moved in arrest of Judgment, that the Declaration was not good, for he hath not set forth any good Title to enable himself to the Tithes: But *per Curiam* the Grant is good, and the Lease he had in the Tithes in the Right of the wife did pass, for he granted *totum jus, &c. suum*, and the word *suum* doth import a propriety in possession, and it is all one as if had especially named them in the Grant, *Cro. Car.* 318. *Arnold* and *Bidgood*.

Stat. 13 Eliz. cap. 2. explained.

Where Infant Baron and Feme make a Conveyance to the King by Bargain and Sale, this is not aided by the Statute of 13 *Eliz. cap. 2.* in that aids only where there is imperfection in the Conveyance, and not where there is Disability in the person that makes the Conveyance: But where Tenant in Tail makes a Conveyance by Deed, that is aided by the Statute, for he may make a Conveyance by Fine, *Cro. Jac.* 364.

Two husbands and their wives join in a Grant of the Lands of their wives, and covenant that they have

have Right to convey and covenant to make a farther Assurance within seven years, and one of the wives are within Age at the time of the making the Deed, and the Right of her Lands descended to her Son, an Infant, by which the Moiety of the Estate was devested out of the Plaintiff. *Per Curiam*. The wife being within Age at the time of the Covenant, as appears by the Verdict, had not power then to convey the Estate according to the Covenant, and there was no request to make the Assurance. *Per Curiam*. The Death of the wife in the Infancy of her Son was the Act of God, and it was the default of the Plaintiff that he did not demand Assurance in the Life of the wife, and after her full Age, *Sir Thomas Jones 195. Nash and Ashton.*

Bargain and Sale. Grant.

Where the Wifes Grant is void when she joins with her Husband or not.

A Bargain and Sale binds not a Feme Covert but by Custom.

A Deed acknowledged by Baron and Feme shall Deed enrolled by the Common Law be enrolled only for the husband and not for the wife by reason of the Coverture, and though it be enrolled for both, it binds not; *Aliter* by Custom, and no one hath power to examine a Feme Covert but by Writ, 2 *Inst.* 673. But

A Feme Covert in London may be examined, Custom of and then she shall be bound by a Deed inrolled, *London.* *Hob. 225.*

Now if the husband is seised in the Right of his wife, and bargains and sells by Deed enrolled to another, this is an Estate of Freehold; for this is as an Estate during Coverture, 2 *Rolls Abr.* 845.

Baron and Feme: Or,

S. and his wife being seised of the Parsonage of *&c.* to them and the Heirs of S. did give the same to King *Henry* the Eighth and his Heirs by their Deed, the King by his Letters Patents granted it over, the wifes Grant is void, *Hob. 224. 5. Anne Newler's Case.*

Surrender.

Baron and Feme Jointenants for Life, the Baron may well surrender to him in Reversion, and this shall bind the husband though not the wife, nor shall be any Discontinuance to her, yet this is not a good Surrender during the Life of the Baron, *Keilw. 42.*

What is a Surrender or not.

If Lessee for Life enfeoff Baron and Feme in Reversion in Right of the wife, this is a Surrender (submitting it not a Forfeiture) but if Lessee for Life grant his Estate to Baron and Feme in Reversion in Right of the wife, this is not any Surrender for the benefit of the Baron, *21 H. 7. 40.*

M. and J. his wife take a Lease jointly for their two Lives, and now by new Indenture take a new Lease to them two and the Survivor, the acceptance of the second Lease to commence *a die datus* is a Surrender, because they conclude then that the Lessor had power to make a new Lease, which he cannot do unless the former be surrendered, *More 636. Milow and May's Case.*

If Feme Lessee for years take husband, who after accepts a new Lease for their Lives, this is a Surrender of the first Lease, *Plowd. 199. Wrotb and Adams.*

Baron and Feme they cannot expressly nor by Acceptance of a new Lease surrender the wifes Freehold so as to bind her surviving, *Hobert p. 203, 204.*

Baron

The Law of Husbands and Wives.

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Baron and Feme are seised in the Right of the wife for Life of the wife, and the King grants this to the wife for Life of the wife with Remainders over by new Letters Patents in consideration of the Surrender of the first Estate, this is a void Grant, for that this Surrender is not absolute inasmuch as the wife after the death of the Baron may claim her first Estate, *Hob. Swain and Holman*.

Release. Vide Fine.

Baron and Feme are Lessees *pur auter vie*, the Lessor may enlarge their Estate by Release for their own Lives, 2 *Rolls Abr.* 401.

Covenant was that a Stranger should pay 8 *l.* yearly to one of the Covenantees, and to one *F.* a Stranger; *F. S.* took husband one *B.* who did release the Payment; the Question was, whether by this Release the Defendant shall be discharged of payment; *B.* is a Stranger to whose wife the payment is to be made. Now he cannot release this he having no Right at all therein; the Release is made by a Stranger who had nothing in the thing, nor yet any Remedy to come by it: And Judgment was for the Plaintiff, 3 *Bulfr.* 27. *Quick and Harri* versus *Ludborough*.

Release by the husband pleaded to an Action brought by the wife after his decease for Money to be showed her after his death not good, *Brownl.* 15. *Heber and Hudson*, p. 18. *Smith and Stafford*.

Exchange.

If Baron and Feme exchange with another this is good during the Coverture, 39 *E.* 3. 30.

If the husband exchange the Land of the wife for Lands of less value, if the wife after his death once agree

agree to the exchange she shall never avoid it afterwards, 9 H. 6. 52.

The husband and wife were seised of Lands in Right of the wife, they both joined in Exchange of the Lands to a Stranger for other Lands, which Exchange was executed ; the husband and wife seised of the Land taken in Exchange aliened the same by Fine. *Per Curiam*, The wife after the death of the husband may enter into her own Land notwithstanding the Fine, 1 Leon. p. 285.

By the woman's acceptance of Dower out of Lands exchanged she agrees to the Exchange, 3 Leon. 27.

Of a Feme Covert's being a Purchaser, and how she shall be good.

A Feme Covert cannot take any thing of the gift of the husband, but is of a capacity to purchase of others without the consent of her husband, but her husband may disagree thereto and devise the whole Estate ; but if he neither agree nor disagree, the Purchase is good ; but after his death although her husband agreed thereto, yet she may without cause alledged wave the same ; so may her Heir also if after the death of the husband she agreed not thereto, 1 Inst. 3. a.

How a Man may execute an Estate to his Wife.

By no Conveyance at the Common Law a Man could during the Coverture either in Possession, Reversion or Remainder limit an Estate to his wife : But a Man by his Deed may covenant with others to stand seised to the use of his wife, or make a Feoffment or other Conveyances to the use of his wife, and now the Estate is executed to such uses by the Statute of 27 H. 8. But a Man cannot covenant with

with his wife to stand seised to her use, because he cannot covenant with her for that they are one person in Law: And yet if *Cestuy que use* had devised his wife should sell his Land and made her Executrix and died, and she took another husband, she might sell the Land to her husband, for she did it *in iure droit*, and the husband shall be in by the Devisor. So if a Charter of Feoffment be made to the wife, the husband as Attorney to the Feoffor may make Livery to the wife, 1 *Inst.* 112.

Of Christian Names of Women in Grants, whether one or several.

Jehan makes a Lease by the Name of Jane, *Quere.*

A Grant to T. and Ellen his wife, where her Name is Emmelin, yet it is good, because it is the wife of T. 2 *H.4.* 25. For wife *Uxor* is a good Name of purchase, as *uxori J. S.* So if a Christian Name be added and mistaken, as *Em' pro Emmelin*, *inutile per inutile non vitiatur*, 1 *Inst.* 3. a.

Jenes and Anne are several Names of Baptism and not one Name, *Cro. Jac.* 425.

Jane and Joan are but one Name, and not distinct several Names, *Mich. 15 Jac. B. R. Griffish and Middleton.*

Isable and Sybil are distinct Names of Baptism, 1 *Ass.* 11.

C H A P. XVII.

Leases.

Of a Lease for Lives made by Baron and Feme. Of a Lease made by the Husband of the Wife Land, and how and wherein it shall bind the Wife or not. What shall be a good Lease warranted by the Statute of 32 H. 8. cap. 28. The Qualifications of such Leases to bring them within the Statute. What acceptance of the Husband shall affirm a voidable Lease. What is a good Lease by Baron and Feme to bring Ejectment. Leases for years made to Baron and Feme. Diversity between a Lease for Life and a Lease for Years made to a Feme Covert. Lease to a Feme Covert when it shall be said to vest. Of a Lease for Life made to Baron and Feme. If the Husband may grant it when the Lease is made to Baron and Feme. If the Husband may grant it when the Lease is made to the Survivor for Years. How if the Remainder be to the Heirs of the Survivor. Of Leases for Life made by Baron and Feme. Diversity when Leases are made by the Lessor in person, and when by Letter of Attorney.

*Lease for years made by Baron and Feme, Vis
Tit. Rent.*

By the Husband of the Wifes Land, and how and wherein it shall bind the Wife or not.

By the Baron sole.

Voidable not void.

THE Husband makes a Lease of the wifes Land and dies, the Lease is not determined nor void

after the death of the husband, but voidable only by the Entry of the wife after his death, *Cro. Jac.*

332. *Jordan and Wives.* But

If Baron seised in Fee in the Right of his wife had Issue by her, and so is Tenant by the Courtesie, and after makes a Lease for years reserving Rent, and after the wife dies, and after the husband dies before the end of the years, yet this is void and ended in the Law before any Entry of the next Heir of the wife, forasmuch as he cannot make this good by any acceptance of the Rent, the Lease being made only by the husband, 1 *Rolls Abr.* 380, 381. *Cro. Car.* 399. *Miller and Manwaring.*

But the husband makes a Lease of the wifes Land and dies, this Lease is not determined nor void after the death of the husband, but voidable only by the Entry of the wife after his death, *Cro. Jac.* 332. *Jordan and Wives.*

If Baron and Feme lease for years by Indenture reserving Rent, where the husband had all the Estate in the Land, and the wife nothing, after the death of the Baron the Lessee in an Action of Debt for the Rent brought by the wife shall not be estopped to say that at the time of the Lease made the wife had nothing in the Land, for this doth not enure by way of Estoppel, forasmuch as it enures by way of Interest, 1 *Rolls Abr.* 877. *Brierton and Evans,* *Cro. Eliz.* 701. *mesme Case.*

Where a Lease enures by way of Interest, and not by Estoppel.

By Baron and Feme.

What shall be a good Lease warranted by the Statute of 32 *H. 8. cap.* 28. Or,

What Lease for years made by Baron and Feme shall bind the wife and her Heirs or not, *Vid.* 1 *Inst.* 44. 45.

By the Statute of 32 *H. 8.* any husband and wife joined of any Estate of Inheritance in Fee-simple or Fee-

Fee-tail in the Right of the wife, or jointly with his wife before the Coverture or after, this shall bind the wife and her and their Heirs; but such Leases must have these Qualifications.

1. They must be by Deed indented.
2. They must begin from the day of the making thereof, or from the making thereof.
3. There must not be a double Lease in being at one time.
4. It must not exceed one and twenty years or three Lives from the making.
5. It must be of Lands, Tenements or Hereditaments manurable.
6. It must be of Lands or Tenements which have most commonly been letten to Farm or occupied by the Farmers thereof, by the space of twenty years next before the new Lease made.
7. There must be reserved the yearly accustomed Rent, which must be reserved to the Baron and Feme and to the Heirs of the Feme.
8. They must not be made without Impediment of Waste.

If they are made with these Qualifications they shall bind the wife and her Heirs, but if they are not warranted by this Statute, yet they shall be good against the husband.

The wife must join in the Lease and be made party to it, and seal and deliver the same in person; and if it be for Life or Lives there must be Livery and Seisin, *Cro. Jac. 563. Greenwood and Tyler.*

The husband purchased Lands to him and his wife and their Heirs, he afterwards, his wife not being party, let these Lands to L. and T. for 60 years if they lived so long, rendering Rent, this Lease shall bind the wife by the Statute of 32 H. 8. cap. 34.

for it is not within the Proviso, for that it is not the sole Inheritance of the wife, *Cro. Car. 22. Smith and Trinder.*

If a Man posselt of a Mannor for 99 years makes his Will and deviseth it to *A.* his wife, for her Life to set, let or make Estates out of it, and them in as ample manner as I my self might, if I were living during the said Term; and after the death of *A.* deviseth it to *B.* his Daughter, and to the Heirs of her Body begotten and dies, *A.* being Executrix consents to the Legacy, and after makes a Lease of a Tenement, parcel of the Mannor, to *C.* for 99 years, if threee Lives shall so long live, and dies, this is a good Lease against *B.* the Daughter, although it was objected, that by this Clause she had only power to dispose of it during her Life, *2 Rolls Abr. 261.*

Baron and Ferne seised of Lands in the Right of the wife levied a Fine to the use of themselves for their lives, and afterwards to the use of the Heirs of the wife, Proviso that it shall and may be lawful to and for the Baron and Ferne at any time during their Lives to make Leases for one and twenty years or three Lives; the wife being Covert made a Lease for one and twenty years, and adjudged a good Lease against the husband, though it was made when she was a Ferne Covert, and by her alone, and this by reason of the Proviso, *Godb. 327. pl. 419. Quere.*

Proviso to make Leases.

Tenant for Life takes husband, and by Deed indent- ed they make a Lease to him in Reversion for the Life of the husband, reserving Rent, this is no Forfeiture; for he in the Reversion was party, and a Surrender it is not, for their whole Estate was not given, and the Reservation is good, *1 Inst. 42. a.*

Forfeiture or not.

Baron and Ferne seised of Land in the Right of the wife, the husband alone makes a Lease for years, afterwards Baron and Ferne levy a Fine, and they both die, the Conisee shall avoid the Lease, *1 Lem. 247. Harvey and Thomas.*

Baron makes a Lease, then Baron and Ferne levy a Fine the Conisee shall avoid the Lease.

A Lease is made by Baron and Feme *in jointure*, and he dies, and she accepts the Rent, it is good against her, *Cro. Jac. 563. 2 Anders. 42.* For by her own Act she hath affirmed that the Estate continues.

Second Husband accepts the Rent it binds the Wife.

Baron and Feme make a Lease by Indenture for Term of years, rendering Rent, the Lessee enters, the husband before the day of payment of the Rent dies, and the wife also before the day of payment takes a second husband, who accepts the Rent at the day and dies, the wife may not oust the Termor, she might have avoided the Term before the day at her pleasure; but that Liberty she had assigned to her second husband, *Dyer 159.*

Vide plus sub Titulo, What shall be a Disposition of the Wife's Term or not.

It was held *Pasch. 18 Eliz. in C. B. Que si Baron & Feme sont & font Lease de terres del Roi per fait Indent. pro 21 ans de le date de fait servant rent &c. Le Baron & Feme ou l'un d'eux adonque estant deins age de 21 ans, ceo lease n'est garrant estre bon per Stat. 32 H. 8. Et uncore est tenu que si Jointure soit fait al Feme deins age avant que el soit Espouse & puis est marry, & le Baron morust que el ne poit waive ceo Jointure & de mand estre endowed de tierce part de tous les terres de que son Baron morust seise. Mes serra la per ceo Jointure fait avant les Espousals per raison de Stat. 27 H. 8. cap. 10. come al temps de seisme de Jointure el ad estre de plein age. Ex *Manscript. Mri. Brownloe.**

Wife conceals her Marriage and makes Leases as a Widow, the Husband decreed in Chancery to confirm the Lease.

If a Feme sole being a Widow be seised of Land and secretly takes husband, and conceals her Marriage and so continuing under the notion of a Widow makes Leases of divers parcels of Land, and afterwards the time of her Marriage is published, the husband

husband in Equity sought to avoid the Leases, but was denied Relief, and decreed in *Chancery* to confirm the Leases during the Term.

Lease for years by Baron and Feme without Deed, is void, as to the Feme, *Cr. El. 656*.

Baron and Feme, (in the right of the Feme) and a third person were Jointenants for the Lives of the wife, and of the third person, the Baron and Feme by Indenture let the Moiey for 21 years, the Feme dies, the surviving Joyntenant enters: Lessee brings Trespass, and recovered; for the Lease is good, and is as a Lease made by her, until she after Coverture, or one who claims in privity by her, avoids it by Entry; for it is not void by the Death of the Baron, but voidable, and the Avoidance ought to be by Entry, and this cannot be by the Jointenant's Survivor, for he is paramount the wife, and so the Lease shall bind as long as any Jointenant be alive, *Cr. Jac. 417. Smalman & others, 1 Rol. rep. 441. Mesme case*.

If a Man demise Lands to B. his wife for life, the Remainder to C. in Fee, and by a Codicil he devise that B. shall have a power six months before his death to Lease this for six years. B. takes a second husband, she and her second husband may Lease this by Deed or without Deed for six years; and if they take this *Habend' a die datum*, it is good, *1 Roll's Abr. 329*.

Lease by Indenture signed and sealed by Baron and Feme, (of the wife's Land) and a Letter of Attorney by Baron and Feme to deliver it on the Land in both their names, and the Declaration was of a Lease by the Baron only, and not in the name of the wife in Ejectment; the Declaration is good; for the delivery by the Attorney is a void Delivery, and void Warrant as to the wife, and so it is the Lease of the Baron only: but if the Lease had been delivered upon the Land by Baron and Feme, it had been a good Lease for both. But now it is the Lease of the Baron only, and not voidable.

Baron and Feme Jointenants with another; she and her husband make a Lease, and the wife dies, the Lease is good against the Survivor.

Power to make Leases.

Lease of Ejectment by Baron and Feme.

voidable, but void against the wife, *Cr. Jac. 67. Gardner and Norman*; and so in *Wilson and Rial case, Yelv. 1.* in such case the Declaration was to the Baron and Feme, and adjudged the Lease to be the Lease of the Baron sole, and doth not maintain the Declaration. But in *Cr. Car. 165. Hopkins's case contra*, where the Lease was sealed and subscribed by them both, and a Letter of Attorney made by them to deliver it upon the Land. *Et per totam Curiam.* It is a good Letter of Attorney for both, and the Lease well delivered, and it is the Lease of them both during the husband's life.

Leases for years made to Baron and Feme.

Diversity between a Lease for life, and a Lease for years.

There is a diversity between a Lease for life and a Lease for years made to a Feme Covert. If I let Land to a Feme sole for years, who taketh husband, and then I confirm the Estate to Baron and Feme, To have and to hold to them for the term of their two Lives, this Confirmation makes them Jointenants for their Lives, because the Chattel of a Feme Covert may be drowned, and the husband hath such a Possession in her Right of a Chattel as is capable of a Confirmation or a Release; but a Feme's Estate of a Freehold is not be altered by the Confirmation made to the husband and her, as a term for years may, where the husband may make Disposition at his pleasure, *1 M. 300.*

Where the Baron shall be Assignee to the Wife.

Feme Lessee for years upon condition, that she, her Executors or Assigns, shall not alien without the consent of the Lessor, she taketh Baron and dies; the husband is within the danger of the Condition, if he is Assignee; in *Moor and Ferrand's case, 1 L. pag. 3.*

An Estate made to a Feme Covert, *de novo*, vests till the husband's dissent, but to a new Lease made to a Feme, who was Lessee before, vests not till his assent, *Hob. 204.*

Lease for life made to Baron and Feme.

I let Land to a Feme sole for term of her life, who taketh an husband, and after I confirm the Estate of the Baron and Feme, *Habendum* for term of their lives. In this case the Baron does not hold jointly with his wife, but holdeth in right of his wife for term of her life; but this Confirmation shall enure to the husband by way of Remainder for the term of his life if he survive the wife; he cannot hold jointly with the wife, because the wife hath the whole for her life, and Jointenants must come in by one Title, *1 Inst. 299.*

Land is demised to Baron and Feme for their lives, the Remainder to the Survivor of them for years; the husband granted over this term for years and died, the wife shall have it, and not the Grantee, because there was nothing in the one or the other to pass over but the Survivor; so if the wife had died after the Grant, and the Baron survived, yet he shall have the term against his own Grant, *Popb. 4, 5.* So if a Lease be made to Baron and Feme for their lives, the Remainder to the Executors of the Survivor of them; and the husband grant the term and dies, this shall not bar the wife, because the wife had but a Possibility and no Interest, *Co. Lit. 46. b.*

But if a Lease is made to Baron and Feme for their lives, the Remainder to the Heirs of the Survivor, it's a good Remainder notwithstanding the uncertainty; and in that case the husband after the death of the wife, shall have Judgment to recover the Land, *Godolst. 139.*

Remainder to the Heirs of the Survivor.

Lease to Baron and Feme, and his Son for life, the Son dies ; he in pleading shall not say as amongst other Jointenants, *fuer' seisi' in dominico suo ut de libero Tenemento per termino vitia ipsorum patris et filii per jus accrescendi*, but omitting *per jus accrescendi*. Ex Manuscript Mr. Brownloe.

Leases for Life made by Baron and Feme. Ut supra.

Livery,
Diversity.

Lease by Baron and Feme of the Lands of the wife *Habendum* from *Michaelmas* for life, and Livery is made after *Michaelmas*, *Secundum formam Chartae*, it is good enough ; and the difference is where the Livery is made by the Lessor in person, and where by Letter of Attorney in the same Chance generally made : But if the Letter of Attorney be to make Livery after *Michaelmas*, it is good enough in both cases ; for there is not any Intention that the Livery should operate in *futuro*, but that Livery should be made when it should operate, and the Estate should be good presently ; and it differs from 2 Rep. 55. *Buckler and Harvey*, where a Reversion was granted *Habendum* after *Michaelmas* for life, although the Attornment be after *Michaelmas*, yet it being the Act of a Stranger shall not make the good which otherwise would be void : But here when the Lessor makes Livery himself after *Michaelmas*, it is well enough, Cr. Jac. 563. *Greenwood and Tyle*. Lease made by Baron and Feme, in right of his wife, to J. S. *Habendum* from *Michaelmas* following for term of life, after *Michaelmas* Baron and Feme make Livery, *secundum formam Chartae*, it shall be good against the wife to bind her ; for the Livery alone did not make the Lease, but the Livery and Deed, and it took its operation by both. And although if Livery had been made before *Michaelmas*, it had been void to make it a good Lease ; yet it being made after *Michael*

Michaelmas, it is made a good Lease by the Deed and Livery, and not by either of them solely, for the Livery in this case is but the Execution of the Deed, and is a sufficient witness of their Agreement, which is the cause it ought to be by Deed to prove the Agreement of the wife; and all Reservations, Covenants and Warranties in the Deed, are good, and the Lessor and Lessee bound by them.

N 3

CHAP.

C H A P. XVIII.

Wills.

How and in what Cases a Feme Covert may make a Will. What she may devise without the consent of her Husband. If she may make a Declaration in the Nature of a Will, without the Assent of the Husband. Several Cases of the Husband's being bound to permit his Wife to make a Will. Of Devises to the Wife by the Husband or others, and the Constitution of such Devises. What is a Devise by Implication or not. Of a Feme Covert assenting to a Legacy. If the Husband may devise the Term made to him and his Wife. Wife legatee of Goods is made Executor, if the same Husband's Executor shall have them.

How and in what Cases a Feme Covert may make a Will, and it shall be good or not.

A Feme Covert may make a Testament, if her Husband agree to it after her death, *Mitchell Jac. B. Grant's Case.*

A Feme Covert may not devise things in Action which she hath, without the Assent or Agreement of the husband, and by his assent she may make Executors, or him to be Executor, 4 H. 6. 3. 39 H. 6. 27.

A Feme Covert Executrix may not devise any Goods she hath as Executrix, without the assent of her husband or his Agreement afterwards, although she may make an Executor without his assent. *Grant's Case, supra.*

Regularly a Feme Covert cannot make her Will, Regula. and therefore a Feme Covert made a Will, and devised 30 l. per annum out of some of her own Land to a charitable use; the Heir submits himself to an Award, and is bound to perform it; the Arbitrators award payment of it, yet by Decree of Chancery the Heir is discharged of the Payment, and the Devise was *nil ad initio*: The like case of an Infant.

If a Feme sole make a Feoffment to her own use, and after takes husband, and after makes a Will that the Feoffees shall make an Estate to her husband and dies; this Devise shall not be good in Chancery, because that all Acts by a Feme Covert are void, and there *Remains sequitur Legem*.

But though a wife cannot make a Will without her husband's Assent, yet she may make a Writing or Declaration in the nature of her Will, and it shall be good in many cases, as was *Tilley* and *Peirce's* Case, *Cri. Car.* 376. Debt upon Bond conditioned, Whereas the Defendant was to espouse *A. S.* a Widow, if the Marriage took effect, and he should survive the said *A. S.* there were paid to the Obligees 300 l. to and for such Uses and Purposes as the said *A. S.* by any Writing under her Hand and Seal, subscribed and published in the presence of two witnesses, should nominate, declare and appoint then, &c. The Defendant pleads, she did not limit, declare or appoint any Use or Purpose for the employment of that Money. Plaintiff replies, that she by her Will in writing, sealed and published by her in the presence of two Witnesses, (naming their names) did will and appoint such Sums to be paid, and that the Defendant had not paid them, and on Arrest, Judgment, *pro Quer.*

Declaration in the nature of a Will.

The Condition of a Bond was; Whereas he had taken *A. S.* a widow, to wife, being possessed of divers Goods. If he should permit his said wife to make a Will, and dispose in Legacies as much as she would

Condition of a Bond to permit a Wife to make a Will.

would, not exceeding 50 *l.* and pay and perform what she appointed, so that it exceed not 50 *l.* then, &c. The Defendant pleads she made not any Will, and upon issue it was found that she made a Will, and did dispose of divers Legacies, not exceeding 50 *l.* but that she was Covert at the time of making the Will; and Judgment *pro Quer.* for it is a Will within the Intent of the Condition, and it is but her Appointment which the husband is bound to perform, *Cro. Car.* 219. *Marriot and Kinsman.*

The like Case is *Cro. Car.* 597. *Sherman and Liley.* The Condition was to permit his wife to make a Will of her first husband's Goods, to the value of 100 *l.* to be paid within one year after her death. That then, &c. Defendant pleads, that he permitted his wife to make a Will, but does not plead that he paid it accordingly, and so the Plea was held to be ill.

It is held in 3 *Keb.* 624. Articles were made before Marriage, That the wife shall make a Will, and the husband to pay the Legacies devised. *Per Cur.* Her Will is void, and the husband bound only by the Articles to permit it, *vid. Mod. Rep.* 211.

In *Harris and Hesse's Case*, 1 *Keb.* 347. Authority was given by the wife to devise 300 *l.* and he disposeth 200 *l.* by Fifties, and well, *per Cur.*

If a Feme Covert make a Will, and devise Goods to another, and the husband after her death deliver the Goods to the Devisee accordingly, this shall bind him, 26 *E.* 3. 71.

*Of Devises to the Wife by the Baron or others,
and the Construction of such Devises.*

A Man may devise Lands to the wife, though there be but one person in Law, because the Devise doth not take effect till after his death; but though a husband's Will doth not take effect till after death, yet if a Feme Covert be seised of Lands in fee, she cannot de-

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wife the same to her husband, because at the time of the making her Will she had no power, being *sub potestate viri*; and the Law shall intend it to be done by the Cohesion of her husband, 1 *Inst.* 112. b.

If a Man devise Lands, whereof he is seised in Fee to his Son and Heir after the death of *A.* the wife of the Devisor, this shall raise an Estate for life to *A.* by Implication, because by this the Divisor shews his intention that this his Heir shall not have this during the life of his wife; whereas had it not been for the Devise, he ought to have had it presently upon his death, 13 *H.* 7. 17. b.

Devise by Implication.

But upon a Lease for years on condition, that he should not alien to any besides his Children, the Lessee deviseth part of the Estate to *H.* his Son, after the death of the wife, and made his Executors. *Per Cur.* This Devise to the Son after the death of the wife, is not any Devise to the wife in the mean time, for its plain he did not intend it to his wife, but to his Executors in the mean time, and so no breach or forfeiture. (But in the other Case none other could have it besides the wife, *Cro. Jac.* 74. *Horton and Horton's Case.*) And if a Man devise a Term to the Son after the death of the wife of the Devisor, this shall not raise any Estate to the wife, because it does not appear that his intent was so, because the Son was not to have this by the Law after the death of the Devisor without a Devise, but the Executor.

If a Man devise a Term to his wife, if she so long live unmarried, and if she marry, then the wife shall have a Rent out of the Land, and make his wife Executrix and die, and the wife consent to the Legacy of the Term, and enters upon it, and after takes husband, this Consent to the Legacy of the Term is like a Consent to the Rent when the Contingent happens, *Mich.* 13 *Jac.* B. R. *East and Hayward.*

Consent to a Legacy of a Term.

It

Feme Covert
cannot assent
to a Legacy.

It is settled, that a Feme Covert cannot assent to a Legacy ; for if she should have power to assent or disassent to a Legacy, then if a Term be devised to a Feme for life, (who is also Executrix) Remainder to *F. S.* if the Feme takes *F. S.* to husband, yet it should be in her power to affirm or destroy this Devise, which would be mischievous, *Syd. 188. Cook and Bellamy.*

One devised a Term to his wife for life, and when his Children not provided for ; and the Term was afterward sold upon Execution for the Debt of the wife, and after the wife died during the Term ; it was judged that notwithstanding this Alienation, the Children of the Devisor should have the Residue of the Term, *Woodcock's Case.*

Where the
wife shall have
the Goods, and
not the Execu-
tors of the
husband.

The Residue of my Goods I give to *F.* my wife, whom I make Executrix of this my Will, to dispose for the Health of my Soul, and to pay my Debts ; and dies : She pays the Debts, and takes a second husband, who makes his Executor, and dies possess'd of the Residue of the Goods ; the wife shall have them, and not the Executor of the husband if he did not make Gift of them in his Life-time, *Dyer 321. v Andros. More 98. Ph. 544, 343, 545.*

F. S. deviseth to his wife 200 *l.* to be paid at such day, and if it is not paid then, that his Executors shall pay her 200 *l.* at such a day after to come : The wife dies before the first day, the Executors are *Hill. 2 Car. Rot. 858. Dier 262. in margin.*

Of the Husband's devising the Estate of the Wife

If a Lease be made to Baron and Feme for years, the Baron cannot devise the Term, because the wife is to be by Survivorship before the Devise takes effect.

C H A P. XIX.

Rent, Reservation, Emblements.

In what Cases the Wife shall not have the Rent though the Reservation be to her. The Husband grants a Rent out of the Wife's Term, and dies; if the Wife shall hold it discharged, and why. Of what Arrears of Rent the Statute of 32 H.8. c.37. gives the Husband power to recover. Feme Covers received the Rents, they not having notice of the Coverture. Where the Husband shall be charged with the Arrears. A remedy for Rent out of the Wife's Land, how to be brought. Where the Executor of the Husband shall have the Rent, and not the Wife. Where the Wife shall have the Emblements, and where the Husband.

What shall be good to the Wife or not.

A Possess'd of a Term for 100 years by Deed indentured, mentioned to be made between him and *B.* his wife of the one part; but she never sealed the Deed. *A.* and *B.* assigns the Term to *C.* yielding and paying during the Term to *A.* and *B.* and the Survivor of them, and to the Assign of the Survivor of them, 10 *l.* Rent *per annum*, upon condition that if the Rent be not paid, it shall be lawful to him and his wife, and the Survivor of them, and the Assigns of the Survivor of them, to re-enter, and after *A.* dies; neither his Administrator, nor *B.* the wife, shall have the Rent, nor enter for the Condition broken: for the wife shall not have the Rent, because she sealed not the Deed, and so the Rent cannot be reserved to her, being a Stranger; and so it's void as to her, and the Administrator of *A.* shall not have this

Rent not to be reserved to a Stranger.

as Assignee of *A.* during the life of *B.* in as much as this was not intended as a Limitation to determine at the death of *B.* but to be reserved to *B.* herself, and so the Assignee in Law of the husband cannot claim it, because he did not survive the wife, and the word *Solvendo* cannot enure by way of Grant to the wife when it is by way of Reservation to the husband. And the Condition in this Case runs with the Rent, and therefore the Rent being gone, the Condition is gone also; and although the Rent be reserved during the Term, yet the other words (to *A.* and *B.*) restrain it, 2 *Rolls abr.* 450. *Cro. Car'* 289. *Blond and Inman, Godbolt* 448. And so is 2 *Sanders* 344. where the husband possess'd of a Term by Indenture, to which the wife was party, (but she did not seal to it) assigns all his Term to the Assignee, rendering Rent to the said Baron and Feme, and the Survivor of them, and dies; neither the wife nor the Administrator may have the Rent.

Solvendo.

Lessee assigns his Term rendering Rent to him and his wife, (she seals not the Deed) and dies; the wife shall not have the Rent.

Debt for Arrears.

Rent was granted to Baron and Feme for their Lives, the Rent was Arrear, the husband dies, another Rent is Arrear, the Feme dies intestate, and her Administrator brought Debt for the Arrears due in the life of the husband and after. *Per Curiam*, it will lie because the Arrears survived to the wife, as well as the Rent it self, *Cro. El.* 791. *Temple's Case*.

Baron grants a Rent out of the Wife's Land.

If the husband hath a Term in the Right of his wife, and the husband grants a Rent out of it, and dies, the wife shall hold it discharged, for she comes in paramount the charge, 7 *H. 6. 1. b.* 9 *H. 6. 5.* She shall not have the Rent, because she comes in paramount the Reservation; but the Executor of the husband shall have it. *Contra Perkins, Sess.* 834. 1 *Inf.* 46. *b.*

A Man possess'd of a Term for 20 years in the Right of his wife made a Lease for years, rendering Rent to him, his Executors and Assigns, and died, the Rent is gone; but by *Mountague*, the wife in

Chancery

Chancery may be relieved, for the Rent, *Godb.* 279.

A Feme sole is seised of a Rent in Fee, &c. which Remedy for is behind and unpaid: she taketh husband, the Rent Arrears. is behind again, the wife dies, the husband by the Common Law should not have the Arrears grown due before the Marriage; but the Statute of 32 H. 8. c. 37. gives the husband the Arrears due before the Marriage, and a double Remedy for the same by Action or Distress, 1 *Inst.* 162.

Tenant in Dower makes a Lease for years, rendering Rent, and takes husband; the Rent was in Arrear, the husband dies, his Executors shall have the Rent.

When a Feme Covert receives from the Lessees the Payment of Rents, the Lessees not having notice of the Coverture, Rent to the there being no Countermand of Payment to the wife. wife not good.

Per Curiam, This Payment of Rent to the wife is no payment, but the husband may well demand it and recover it again: The payment to the wife is not material, for by such pretences Femmes Coverts should receive their husbands Rents without their Authorities, which is not allowable, (but this seems to be *durum ferro*; and it is an hard case that the Tenants should refuse to pay the Lessor, and so forfeit their bonds of Covenants, and it is a kind of Impossibility for them to divine whether she be married,) *Cro. Jac.* 621. *Sir Paul Tracy versus John Dutton.*

Where the Husband shall be charged with the Arrears.

The Husband or his Executors, 10 H. 6. 7. c. 49. and *Underwood's Case*, B. R. 1641. shall be chargeable in Debt for the Arrearages in the time of the Coverture on Lease made to a woman, *dum sola* *est*, 1 *Keble* 22.

Of

Of *Avowry* for Rent. Vide *Avowry*.

Where the husband shall be charged in Debt for Rent.

Land is demised to a Widow, she marries, the husband incurs during the Coverture, the wife dies, the husband shall be charged in Debt for the Rent, *Ramond 6. Pain and Monshall.*

Arrears.

If a Feme, having a Rent for life, takes husband and dies, the husband shall have the Arrears accrued during the Coverture; but he shall not have the Arrears during the Coverture by the Common Law, yet this seems to be aided now by the Statute of 32 H. 8.

Where the wife shall not have the Rent.

A Man possess'd of a Term for 20 years in right of his wife, makes a Lease for 10 years, rendering to him, his Executors and Assigns, and died: his wife shall not have it, for she comes in by Title in mount; and it is but an Extract of 10 out of the Remainder continuing as before, and the Executors shall have it, for the Rent shall be incident to him who hath the Reversion under the Lessor, who is the Executor, *Poph. 145. Blaxton and Henk.*

Emblements.

Where the Wife shall have the Emblements, and where the Husband.

If Tenant in Dower sow her Land, and die before the Corn is ripe, the Corn in Conscience belongs to her Executors, and not to him in Reversion; but otherwise, it is in Conscience of Grass or Fruits, and the Diversity in Law maketh the Diversity in Conscience.

The Tenant in Dower may devise the Corn sown upon the Land, she is endowed of: If the Husband sow the Land, the Property of the Corn is in the Executor, but subject to this Condition; If the Heir

sign to her the Land sowed for her Dower, she shall have the Corn, for she shall be in *de optima possessione* *qvi*, above the Title of the Executor, 2 *Inst.* 81.

If a Lease be made to Baron and Feme during the Coverture, and the Baron sows the Land, and after they are divorced *causa præcontractus*, the Baron shall have the Corn, because the Judgment is an Act of Law, 5 *Cok.* 116. *Oland's Case*; and so it is if the Divorce be at the Suit of the husband, though *Polham* seemed to doubt of it.

If a husband seised in Fee or for Life in the right of his wife, sows the Land and dies, or his wife dies before Severance, yet he or his Executors shall have the Corn, 1 *Inst.* 55. *b.*

Baron sows the Land, and then there is a Divorce.

If Baron and Feme, Jointenants for life, and the husband sows the Land, and dies before Severance, the Executors shall have the Emblements, and not the wife; for there is no Diversity in this case, and where the husband is seised in the right of the wife, *Mich.* 17. *Skebe and Arnoll, B. C.* but 1 *Inst.* 55. *b.* *contra*: for there it is said she shall have the Corn, and so it's said in *Cro. El.* 2. 61. by *Wray*, that it was so adjudged: *Quere Dyer* 3. 6. 1 *Roll's Abr.* 117. *Noy* 149. *per Cro. Car.* 515. she shall not have it.

Where the Wife shall not have them.

But by *Coke* in *Goodman and Gore's Case, Godb.* 89. *Sil.* 270. Baron and Feme are Jointenants, the husband sows the Land, the wife surviving, shall have the Emblements.

If a Feme seised in Fee, or for Life, of Land, sows the Land, and after takes husband, who dies before Severance, it seems the wife shall have them, and not the Executor or Administrator of the husband, because the husband did not sow them.

Where she shall have them.

If Baron seised of a Copyhold Land in Fee sows it, and after surrenders it to the use of a Feme, who is accordingly admitted, and after the Baron dies before Severance, the Feme shall have the Emblements, and not the Executor or Administrator of the Baron; because

Copyhold.

because the husband pass'd the Emblements with the Land, to the Feme as an Executor to the Land, and by it the Privilege which the Law gives to him that sows, is taken away by the Surrender, and so is as one as if the Feme had sowed it, or purchased the Land sowed of a Stranger.

If the Baron sows the Land, and dies before Surrender, and his wife is endowed of this Land so sowed of a third part, she shall have the Emblements, not the Heir or Executor; for she is to have the Land *suerit culta vel inculta cum frugibus & redditibus*, *Bract.* 2. 96.

Hops.

In Action of Trower the Question was. Feme tenant for Life takes the Plaintiff to husband, the Remainder to another for Life, and Hops were growing out of the ancient Roots, being within the Land in question, the Feme dies a little before the gathering of the Hops; whether these Hops appertain to the Husband, or to him in Remainder? The Court held, they are like Emblements, which shall go to his husband or Executor of the Tenant for life, and not to him in Remainder; for they are such things that grow by Manurance, and Industry of the Owner, and not to be compared to Apples and Nuts, which grow of themselves, *Cro. Car.* 515. *Latbam and Wood.*

A Feme Copyholder, *durante viduitate*, sows the Land, and before Severance takes husband; the Land shall have it, *Cro. El.* 466. *alias* 471.

For what things created during the Coverture, the Wife shall be charged after the death of the Husband, by her Agreement or Disagreement.

Rent.

If Baron and Feme accept a Fine, rendering Rent if she agree to the Estate after the death of the husband, she shall be charged with the Rent, 50 *El.* 3. 9. 6.

If a Lease for years be made to Baron and Feme, rendering Rent, if after the death of the husband the wife agree to the Lease, Debt lies against her for all the Arrears incurred in the Life of the husband, 2 H. 4. 19. 6. but after the death of the husband she may disagree to the Lease.

If Baron and Feme join in a Feoffment of the wife's Land, rendering Rent, the Baron dies, the wife takes a new husband before any Rent; the second husband accepts the Rent, the Feoffment is affirmed for ever. By Acceptance of Rent a Feoffment affirmed.

If Baron and Feme Lease by Deed, and after the husband dies, and she takes a second husband, who accepts the Rent, this shall affirm the Lease against the wife perpetually, *Dyer* 159.

If Baron and Feme join in a Lease for Life of the Land of the wife or years, rendering Rent, the wife may make this good by Agreement after the death of the Baron, 10 H. 6. 24. b. and shall have the Rent, 1 *Lev.* 271. *Butler and Baker's Case.*

If Obligation be made to Baron and Feme, the wife may refuse it after the death of the husband, 1 H. 6. 6. and by such waiver, this is made an Obligation to the Baron sole. Obligation.

So it is in Exchanges and Partition, where Possession of one is waved and refused.

C H A P. XX.

Copyhold.

What Acts of the Husband shall destroy, or forfeit the Custom of the Wife's Copyhold Estate, and when not. Where she shall have her Viduity, though the Freehold be severed from the Manor, and when not. Of Grant, and Surrender to and by Baron and Feme, and the Construction thereupon. Customs of Manors as to Wives or Widows, which are good or not.

What Acts of the Husband shall destroy the Custom of the Wife's Estate, or forfeit it, or not.

THE Husband seized of a Manor in the Right of his Wife, lets a Copyhold Parcel thereof, in years, by Indenture, and Died; this shall not destroy the Custom as to the wife, but that after the death of her husband she may demise it by Copy as before, *Cro. El. 459, or 475. Conisby and Ruskey.*

The Custom of a Manor is, If any Copyholder dies seized, having a wife at the time of his death, that his wife shall have it during her Viduity, the Lord and the Copyholder enfeoff *J. S.* thereof, and the Copyholder dies, his wife shall have it during her Viduity; for the Custom is continued *quoad* her, although the Freehold be severed from the Manor, for the Lords Acts shall not prejudice the Copyholder's Estate, and it is a Privilege by the Custom granted to the Estate, that the wife shall have it after his death, *Cro. Jac. 573. Waldoe and Bertles. Vid. Rolls Rep. 178. Mesme Case.*

Custom continued *quoad* the Wife, tho' the Freehold be severed from the Manor.

But the Custom of a Manor was found to be, that if a Copyholder in Fee died seised, his wife should hold it during her Life as free Bench, the Lord entails the Copyholder, who died seised; she shall not have the Land; but if the Lord had entailed a Stranger of the Land, yet the Land remained Copyhold, and the Custom is not taken away, *Cro. Jac.* 116. *Leismere* and *Avery*.

If a Copyholder makes a Lease for years of Lands, whereof a Feme by Custom is to have her Widow's Estate, she shall not avoid the Lease, unless there be a special Custom to avoid it; for he comes under the Custom, and by the Lord's Licence, as well as the wife, *On. Jac.* 36. *Farley's Case*, *Moor No.* 147. *Mesme Case*.

Feme that hath the Widow's Estate, shall not avoid a Lease made by her Husband.

Baron seised in the Right of his wife of a Copyhold Land, surrenders it. *Per Walmesley*, It is a Discontinuance notwithstanding 4 *Cok.* 23. *Cro. Jac.* 109. *Collins* and *Couck*.

Discontinuance.

What Acts of the Husband shall forfeit the Wife's Estate or not.

Feme Copyholder takes husband, who lets the Lands for more years than the Custom doth warrant; it is made a *Quere* in *Head* and *Challoner's Case*, *On. El.* 149. whether this shall bind the wife as a Condition in Law. But it is resolved in *Saverne* and *Smith's Case*, *Palm.* 387. and 2 *Rolls* 344, 372. *Mesme Case*, if Feme Copyholder of Inheritance takes husband, the husband makes a Lease for more years than the Custom will bear, the Lord enters for the Forfeiture, the husband dies, the wife dies, the heir of the wife enters, and his Entry adjudged lawful, so that it is no Forfeiture.

Copyholder makes a Lease for more years than the Custom warrants, it's no Forfeiture.

Denial of rent.

Denial of Rent by the husband shall be a Forfeiture against the wife, and so Denial to do Suit of Court are present Forfeitures. If a Feme Copyholder takes a husband who commits Wast, this shall bind the wife and the difference betwixt this Act, and the husband making a Lease is : In Wast the Forfeiture goes to the Inheritance of the Wast, which continues for ever; but in *Saverne* and *Smith's Case* the Forfeiture terminates with the Lease. *Vide Rolls Rep.* 372.

Wast.

Diversify.

But if a Stranger without the assent of the husband commits Wast, this is no Forfeiture, 4 *Cok.* 27. *Clifton* and *Molineux*. *Dodderidge* in *Saverne* and *Smith's Case*, took a difference, where the Copyhold came to the Woman after Coverture, his Forfeiture shall not bind her; for then it cannot be said it was her Folly to take an husband that would forfeit as it might if she had the Copyhold before Marriage. *Palm.* 387.

Vide Hobert 181. *Howard* and *Bartlet*. When the Severance of the Customary Tenants from the Manor, shall not prejudice the Widow in her Customary Estate. It is not in the power of the Lords to destroy Widows Estates. By the Severance Incidents to the Tenancy are not destroyed, but Incidents to the Seigniorie are.

The Custom is that a Woman shall hold *durant Viduitate*; she shall make a Lease before Admittance; for in that case there is no Fine due to the Lord, and the Law vests the Estate in her, *Noy* 29. *Remington* and *Cole*, *Hob.* 181.

Surrenders, Grants, and the Construction.

The Wife is named after the *Habendum*, the Grant is good.

The husband takes Copyhold Lands of the Lord *cui donor concessit seisinam*, *Habendum* to Baron and Feme; this is a good Grant to the wife, though he be named after the *Habendum*, and the wife by these words takes a present Estate with the Baron, which

he cannot do by Common Law Conveyance, 1 *Sanders* 151.

A Copyholder in Fee (where the Custom was for a Widow's Estate) made a Lease by Licence, reserving Rent to him and his wife during their Lives, (and did not say, *and either of them*.) *Per Curiam*, The wife may have this Rent, though no Party to the Lease, and it shall continue for the Life of either of them, *Hill's Case*, cited 1 *Vent.* 163.

Where Wife shall have the Rent, though no Party to the Lease.

The husband seised in Right of his wife, cannot grant Copies in his own name, but ought to join the wife with him, *Cro. Jac.* 99. in *Sbipland* and *Roydon's Case*.

The Wife to join with the Husband in Grant of Copies.

Husband seised in the Right of the wife of Copyhold Land, surrenders it. *Walmesly* held this a Discontinuance, notwithstanding 4 *Rep.* 23. *Ideo Quare*; in I conceive it makes no Discontinuance; and *Cok.* 4 *Rep.* is good Law. *Vid. Lex Cust.* 178.

Customs of Manors as to Wives, Widows; what are good and what not.

That the wife of a Copyholder for Life shall hold it *ante viduitate*, was agreed to be a good Custom; and so the Custom of *Taunton Dean*, That if a Copyholder in Fee marries a wife, if the wife survives, she shall have the Fee, & *sic e converso* agreed to be good, *Nov.* 2.

There can be no Dower nor Tenancy by the Courtsey of a Copyhold, without special Custom, 1 *Andersf.* 292. It was admitted by the Court to be a good Custom, That an Executor or Administrator shall have a year in the Land of the Copyholder against the wife that claims her free Bench, *Nov.* 29. *Remington* and *Cole*.

The Custom of a Manor was, That a Woman *imperta viro poterit devisare* her Copyhold Land to her husband, or any other by the assent of her husband.

husband. *Per Curiam*, The Custom is not unreasonable; but because it was *poterit devisare*, which is a word of Justification, and it should have been *visunt devisare*, by way of Excuse, it was adjudged against the Plaintiff, *Moor* No. 268. 3 *Lam.* 11. *Skipwith's Case*.

If a Man marry a Widow, it's a good Custom that she shall not have Dower, *Kitchin* 149. *Dalt.* 30. A but such a Custom of the wife of Tenant in Fee, is not good.

By Custom the wife to have the Moiety as Survivor, is good; and if any Lease be made, she shall have a Moiety of the Rent, 1 *Kebl.* 357.

The wife that is endowable of the Moiety of Gavelkind Land, may not wave it, and have the third part, *Moor* 260.

CHAP

C H A P. XXI.

Vide Will.

Of the Wife's Separate Disposition. Where the Money which the Wife had separate power to dispose of, to whom it shall be paid. Separate Maintenance on a Proviso, and the Pleadings. Where Detainer of the Husband is a breach of the Condition. Covenants in a Deed of Separation between Baron and Feme, and for allowing yearly Maintenance, and Pleadings thereupon.

Condition of a Bond was to pay 50 *l.* to the Plaintiff. *Memorandum*, It is agreed before sealing, &c. that the wife may dispose of the 50 *l.* to whom she will in her life-time to be paid by the Plaintiff accordingly, he being only Trustee of the wife in the said Obligation. Defendant pleads, That the wife of the Defendant with his consent made her Will, and by it bequeathed 30 *l.* of the said 50 *l.* to divers Persons, and the rest to her husband the Defendant, and made him Executor, and after dies, and so she disposed of the said 50 *l.* in her life: In Debt on this Bond, and on Demurrer on this Plea, Judgment was given for the Plaintiff; for the 50 *l.* ought to be paid to be Plaintiff, notwithstanding the Disposal, *See Tho. Jones, p. 216. Blunt and Collins.*

Covenant to pay to the Defendant's wife, or such as she appoints, 50 *l.* *per annum* as a separate Maintenance, provided she live at such a place as N. and W. appoint. Defendant pleads, She did not live at such a place as N. and W. appointed. The Plaintiff replies, She was ready to live at any such place, but that N. and W. appointed no place. To which the Defendant demurred as being a Condition precedent; but the Plaintiff

Condition to pay 50 *l.* to J. S. and the Wife is to dispose of the 50 *l.* yet it must be paid to J. S.

Condition subsequent, and not precedent.

Condition not to meddle with the Goods of the first husband; Detainer of them is a Breach.

The Wife saves Money by her Frugality.

tiff insisted it was a Condition subsequent, and so became impossible, one being since dead, and no place appointed. *Per Curiam*, The Defendant should say she lived at such a place, and that no other was appointed; for this is a Condition subsequent, the Covenant being in pursuance of a former absolute Agreement to pay so much; and it's like the assent of the husband, which is intended till the contrary appears, 3 *Keb.* 363. *Leeds and Baere*.

Bond conditioned, That whereas the Defendant should marry such a Widow who was possess'd of divers Goods of her first husband, and the Goods of his Children, that her husband should not meddle with them; but that she and her Children might enjoy them without Disturbance or Interruption of the Defendant. The Defendant pleads Performance. The Plaintiff Assigns for Breach, that the first husband was possess'd of such Shop and Goods, and that the wife had them before Marriage; and that such day after the Marriage, the Defendant her new husband took the said Goods into his hands, and them detain. Verdict *pro Quer.* And moved in Arrest of Judgment, that here is no sufficient Breach alledged, because he doth not shew that the husband made an Act or Disturbance; for by the Intermarriage the Goods are in the husband, and its not shewed that he disturbed the wife to enjoy them. But *per Curiam*, The Breach is well assigned; for it's said he detain'd them from the wife, especially being after a Verdict. *Cro. Car.* 204. *Crowle and Dawson*.

The wife of an Improvident husband had, unknown to him, by her Frugality, raised some Money for the good of their Children, which she had disposed of for that purpose, being no otherwise provided for this Disposition of the wife the Lord Chancellor established by Decree; but afterwards upon Review and Assistance by the Judges, this Decree was reversed, as being dangerous to give a Feme power to dispose of

her husband's Estate: This was *Scot and Brograves Case*, anno 1639. but in *George's and Chancery's Case* a Disposition by a Feme Covert of Money raised out of separate Maintenance, is good against the husband. Vide *Supra*.

A Feme Covert purloined her husband's Goods or Money, and put the Money into other Mens hands, who buy Lands to her use therewith; if the Heir or Executor of the husband do sue in Equity for Relief, and to have the Land or Money restored, yet denied Relief; for *Egerton* Chancellor said, He would not relieve Heir or Executor, (no not the husband himself if he were alive;) for he sat not there to relieve Fools or Buzzards who would not keep their Monies from their wives. The other Chancellors have been of another Opinion, and with great reason.

Wife purloining her Husband's Goods or Money.

An 100 *l.* was lent by the Lord *Holles's* Lady, and in the Note which was first given for it, it was written that the Money should be disposed as the Lady *Holles* should direct. An Action at Law for this Money being brought, it was barred by the Statute of Limitations: A Bill was exhibited for Relief, and the Statute of Limitations insisted upon; but in regard the Money was look'd upon as a *Depositum*, and a Trust thereupon for the Lady, a Decree was obtained for the Money, 2 *Ventr.* 345. *Lord Holles's Case*.

Bond was given before Marriage, that the wife should dispose of 500 *l.* which she did, and decreed good notwithstanding the Bond was cancelled by the consent of the wife: But upon the releasing the said bond, the husband gave a Note in writing, that she should dispose of it, so as first he might be made acquainted with it; and so the husband would have voided the Note, pretending he was not acquainted with it; supposing those words to be a Condition; but the first Decree was confirmed 1 *Rep.* in *Chancery* 118. *Palmer's Case*.

Separate

Separate Maintenance.

A Feme Covert may sue without her husband for her Separate Maintenance, and the Demurrer was ever ruled. *Cases, 35 Reynes and Lewes.*

Money saved
by the Wife
out of her Se-
parate Mainte-
nance dispo-
sed by her.

Baron and Feme by Agreement separated and lived apart, and it was agreed the wife should have 100*l.* *per annum* Separate Maintenance; and out of which she had saved some Monies, and put it out to loan, and took Bonds in a Friend's Name, and disposed of Money by Will; and this was in *Chancery* established a good Disposition, Lady Prudgeon's Case. *Cases* 11.

In Covenant: The Defendant covenanted with the Plaintiff, That S. (wife of the Defendant) should be permitted to live separate from the Defendant until the Defendant and the said S. by writing under their several Hands, attested by two Witnesses, should give notice to each other that they would cohabit. And further, that he the Defendant, during the Coverture, and until such notice be given of their Design to cohabit as aforesaid, would pay to the Plaintiff the Maintenance of the said S. 300 *l.* *per annum* in four Quarterly Payments; and sets forth, that the said S. from the Date of the Indenture of the Covenants, to the time of the said Suit, did live separate from the Defendant, and no notice of Cohabitation as aforesaid had been given during that time of cohabitation, and for 75 *l.* for one Quarter's Payment, being alive.

Defendant pleads in Bar, That after the Indenture aforesaid, and before the Action, another Indenture was made between the Defendant and S. his wife, on the one part, and the Plaintiff of the other, reciting the first Indenture; and further reciting, That the Defendant and S. did intend to cohabit, and did so at that time, and expressing that it was the true intent and Meaning of all the said Parties to the said

Inde-

Indenture produced, *ut supra*, that so long as the Defendant and S. should agree to cohabit, the said annual Payment should cease: And the Plaintiff did by the last Indenture covenant, That so long as they cohabited, that the Defendant should be saved harmless from the 300 *l. per annum* Payment. The Plaintiff replies, They did not cohabit *modo & forma pro ut*. The Defendant demurs. Judgment *pro quer'*; for unless the Cohabitation had been according to the last Indenture, as by writing mutually subscrib'd, and attested by two Witnesses, &c. it was no Bar; for the last Deed had not taken away the Effect of the former, and a later Covenant cannot be pleaded in Bar of a former: But the Defendant must bring this Action on the last Indenture if he will help himself, *1 Vent. 217. Gawden and Draper.*

CHAP.

C H A P. XXII.

What amounts to a Disposition of the Wife's Term by the Husband, to vest the Interest in him, his Executors and Administrators. What Condition in Mortgages shall survive to the Husband or no. If the Mortgage of the Wife's Term doth amount to a Disposition in Law. Diversity between a Forfeiture, and Bargain and Sale, as to the Extinguishment of the Term of the Wife. Of the Forfeiture of the Wife's Term by the Outlawry or Attainder of the Husband, or on extent. If Recovery by the Husband in Ejectment alters the Term. If Payment of the Debts of the first Intestate, vests the Term in him. What Trusts for the Wife the Husband may dispose of, or not. What shall amount to a Forfeiture of the Wife's Term.

What amounts to a Disposition of the Wife's Term by the Husband, to vest the Interest in him, his Executors or Administrators.

What power
the Husband
hath of the
Wife's Term.

THE Baron by the Intermarriage hath full power over the wife's Term to alien it ; and if the wife dies, the Term survives to the husband ; and if the husband dies, it survives to the wife unless he dispose it : But the husband can make no Disposition of it by his last Will, *Plow.* 416. *Bransby and Gresham* ; and so is 2 *H. 4. 7. b. 1* *Rolls Abr.* 344. *Pop. 5.* where a Man possessed of a Term for years in the Right of his wife, made a Lease for years of the same Land, to begin after his death, and afterwards he died, and the wife survived him, the Question was, If the wife shall have this, or the Lessee ? *Ans per Curiam*, The Lessee shall have it ; for as the husband, during his Life might contract for the Land for

the whole Term which the wife had in it; so might he do for any part of the Term at his pleasure; for if he may demise the Land for 21 years, to begin presently, he may make it also to begin at any time to come after his death if the Term of the wife be not expired; but for the Remainder of the Term, if the wife maketh no Disposition during his Life, the husband shall have it: But in this case, if the husband demise this Land to a Stranger, yet the wife shall have it, and not the Devisee, as it happened in the Case of *Matthew Smith*, because that by the death of the husband (before which the Devise cannot take effect) the wife had it in her first Right not altered by the death of the husband.

The husband can make no Disposition of it by his last Will.

So it is where Baron and Feme are Jointenants during the Coverture for 60 years; the husband by indenture lets all the Land for 70 years to commence immediately after his death, the husband died and the wife survived, the Question was, If this were a good Lease to charge the Possession of the wife? And *Per Curiam*, y. It is a good Lease, for here is a good

Term created in Interest, although not in possession; and it is not like a Case where nothing passeth till his death: 2. The husband having an Interest to dispose in his life-time, he might dispose all the Term, and should bind the wife; so when he hath disposed by an Act executed in his life time of the Interest of the Term, and hath created a Term in Interest, this is as good as if he had granted all the Term, *Cro. Eliz.*

137. 1 Co. 155. *Moor* 329. *Grant and Lacroft*.
L. possess'd of a Term for 18 years, and of another Term in Reversion of the same Land for 40 years, died intestate: His wife takes Administration, and enters and marries J. S. who let it to J. D. for 21 years, rendering Rent, and makes his Executor and dies. *Per Curiam*, During the first Term for years the

Term in Interest, though not in possession.

the Executor shall have it; for the husband had given away all that Term; but for the residue of the Term of 21 years, which is derived out of the Term of 40 years, the wife shall have it as annexed to the Reversion or Term which the wife had, *Cra. El. v. Lofius's Case.*

Disposition of part of the Term, no Disposition of the whole.

If a Man be possess'd of a Term of 40 years in the Right of his wife, and makes a Lease for 20 years reserving Rent and dies, the wife shall have the Residue of the Term, but the Executors of the husband shall have the Rent; for it was not incident to the Reversion, for that the wife was not Party to the Lease: So note, A Disposition of part of the Term is no Disposition of the whole, 1 *Inff.* 46. 6.

But *Blackstone* and *Heath's Case* is; A Man possess'd of a Term for 20 years in the Right of the wife, makes a Lease for 10 years, reserving Rent to him, his Executors and Assigns, and died: The first Question was, If the Executors or the wife shall have the Rent? By *Houghton* and *Crook* the Rent is gone, against *Mountague*, who held the wife should have it; but it was agreed that the Executors of the husband should not have it: And if the husband after the Lease made had granted over the Reversion, the Grantee should not have it: But by *Mountague* in that Case in *Chancery* the wife may be relieved for the Rent, *Goddard Pl.* 396. *Pop.* 145.

Possibilities not vested in the Husband.

In Cases of Possibilities the Law doth not vest them in the husband: As if a Feme sole be possess'd of a Chattel Real, and be thereof dispossessed, and then takes husband, and the wife dies, and the Baron survives, this Right is not given to the Baron by Intermarriage; but the Executors or Administrators of the wife shall have it; so it is if the wife have but a Possibility, as if the husband possess'd of a Term in the Right of his wife grants this to *J. S.* if he shall so long live, and dies, the wife shall have this Possibility of Reversion; if *J. S.* dies within the Term, and

the Executors of the husband, 1 *Inst.* 351. 1 *Rolls Abr.* 345. So if a Lease be made to Baron and Feme for Term of their Lives, the Remainder to the Executors of the Survivor of them, the husband grants away this Term and dies; this shall not bar the wife, for that the wife had but a Possibility, and no Interest, 1 *Inst.* 46.

Baron and Feme mortgage their Interest in the wife's Term, and before the day of Payment the wife dies, and the husband paid the Money at the day in Redemption of the Mortgage, and entered and took another wife, and made her Executrix, who entered, & took Administration to the Goods of the first wife, and entered upon the Lessee, upon whom the husband wife entered, and made the Lease to the Plaintiff, and Judgment was given for the Plaintiff, because that though the Lease was at first the wife's, and that the husband was possess in her Right; so although he had purchased the Fee-simple, the Lease had not been extinct, yet by the Intermarriage he had full power to alien it; and if he survive the wife, he is to enjoy it against her Executors and Administrators: So here when he survives, the Condition survives to him and restores the Lease to him as it should have been if it had been aliened, *Id.* 3. *Young and Radford*, 1 *Rolls Abr.* 344. in same Case.

It is said in *Rolls Abr.* 344. If a Feme possess of a Term take husband, and they grant the Term upon Condition, and re-enter for the Condition broken, the wife shall have the Term again: And the Case of *Radford and Young* is there cited to be adjudged contrary to *Hobart*; which was, if a woman possess of a Term take husband, and they grant the Term upon Condition, if their Executors or Administrators pay so l. to re-enter, and after the husband pays the so l. this is not any Disposition, but they shall be possessed in the Right of the wife; for although he pay

Baron and Feme join in a Mortgage of the Wife's Term, the Feme dies, the Condition shall survive to the Husband.

pay the Monies to redeem it, yet perhaps he retains the Money when it was mortgaged.

If a husband possess of a Term in Right of his wife grant this over upon Condition, that the Grantee shall pay 10 *l.* to his Executors, the husband dies, the Condition is broken; the Executors of the husband enter, the wife shall not have the Term, for this was a Disposition of the Term; all the Interest being granted over, 1 *Inst.* 46. *b.*

If husband possess of a Term in Right of the wife grants this to *J. S.* if he shall so long live, and the wife shall have this, *causa qua supra.*

If a husband grant the Land which he had a Lease in the Right of his wife, except part, the wife shall have this part so excepted, for it is not disposed of, *Dyer* 264.

Lessee for years assigns his Term to the wife of his Lessor and a Stranger, and after the Lessee bargains and sells the Land for Money by Deed inrolled, and dies; the Stranger dies, and the wife claims to have the Residue of the Term not expired. Now in *Bracebridge's Case*, *Plowd.* where the husband made such a Case made a Feoffment, it was adjudged by the Livery he had extinguished, and given over the Term of the wife: But some make a Difference where the husband makes a Feoffment, and when Bargain and Sale, because by it nothing passeth but the use; and after the Statute of 27 *H. 8.* the Possession is conveyed in such manner as the Use, and by the Grant of the Use the Lease in *jure uxoris*, passes not, *Moor* 171.

Extinguishment of the Term of the Wife.

Extent of the Wife's Term.

If a Term for years in the Right of the wife be mortgaged for the Debt of the Baron, this shall bind the wife, 7 *H. 6.* 26. but the wife shall have the Residue after the extent incurred.

If the Baron grant the Herb or Vesture of the Land which he held with his wife for years, and dies, the Grantee shall have the Grass or Vesture, 7 *H. 6.* 32.

If Baron and Feme be ejected out of the Term in Right of the wife, and the Baron recovers in Ejection brought by him in his own name only, this is an Alteration of the Term, and vests in the husband only, 1 *Inst.* 46. b.

Upon Execution against the husband for his Debt, the Sheriff may sell the Term during his Life.

Terms for years in Right of the wife, if the husband be outlawed or attainted, they are Gifts in Law, 1 *Inst.* 351.

Though the husband be possessor of the Term in her Right, yet he hath power to dispose thereof by Grant or Demise; and if he be outlawed or attainted, they are Gifts in Law, 1 *Inst.* 351.

Two Femmes Jointenants of a Lease for years, one of them takes husband, and dies; yet the Term shall survive; for though all Chattels real are given to the husband if he survive, yet the Survivor between the jointenants is the elder Title, and after the Marriage the wife continued sole possessed; for if the husband die, the Feme shall have it, and not the Executors of the husband; *aliter* of personal Goods, 1 *Inst.* 185. b.

Term of the Wife sold by the Sheriff. If Baron be outlawed or attainted.

Two Femmes Jointenants, one takes Husband and dies, the Term shall survive.

What Trusts of the Wife the Husband shall dispose or not.

If husband being possessor of a Term for years, grant this over in Trust, for the Benefit of the wife, he may afterwards dispose and forfeit this Trust, and bar the wife, p. 8. *Fac. in Seac. Wyke's Case*; for he had a great power of the use which he had in the Right of his wife, as he had of a Term in the Right of his wife; but if he make a Lease for years to another to the use of the wife if she so long live for her jointure, the husband may not dispose this Trust, *Messrs Case*, and so for the Benefit of his Wife and Children.

What Trust of the Wife the Husband may dispose or not.

If a Lease be made by the Father to P. in Trust for the Advancement of his Daughter, who married with him, the husband may clearly dispose of this Term, and no Remedy at Common Law for it. *1 Bulst. 118. Platt and Sleepe.*

If a Term for years be granted in trust to the use of the wife, the husband ought not to have this Trust after the death of the wife.

If a Term for years be granted to the use of a Feme Sole, and she takes husband, and dies, the Administrator of the wife shall have the use and not the husband; because this Trust of the wife was a thing in privacy, and in nature of an Action, for which there is no remedy but by Writ of *subpoena*; for the Trust runneth in privacy in this case, and the husband shall not be Tenant by the Courtesy of an Use.

The Husband cannot grant or charge the Term of the Wife in trust.

A Woman conveys a Lease in Trust for herself, and after marries; in such case it lies not in the power of the husband to dispose of it, and if the wife dies the husband shall not have it, but the Executor of the wife, *March Rep. 45. Sir John St. John's Case* so ruled at Common Law; and in *Wytham Waterhouse's Case*, a Lease for years was granted to the Defendant to the use of the Grantor's Sister, whom he afterwards should marry; who married her accordingly, and then died: the Feme takes to Plaintiff to husband, and afterwards she died; and the Defendant takes Administration of the Plaintiff's wifes Goods, and the Plaintiff sued the Defendant in Chancery to have the Term; and it was decreed to the advice of all the Judges of England, that neither the Term nor the Use thereof appertained to the husband, *Cro. El. 466.* And it was resolved in Chancery, That the husband cannot grant or charge the Term of the wife in Trust, *Cases 225.* as the wife having assigned her Term in Trust for herself before Marriage, and the husband without joining with the Trustees, does mortgage the Trust; and the husband

Nor forfeit it for Outlawry or Felony.

being dead, the Mortgagee exhibits his Bill to have the Lands conveyed to him, or that they should redeem, and the Court dismiss the Plaintiffs Bill; for since Queen *Elizabeth's* time it has been the constant course of this Court to set aside all Incumbrances and Acts of the husband upon the Trust in the wife's Term, and that he shall neither charge or grant it away, neither shall he forfeit it by Outlawry or Felony if it be for Jointure.

A Trust was for raising of Money for a Feme sole in case she did not marry contrary to the liking of Sir *Ed. W.* and his Lady; and if she did, then to such persons as the said Sir *Edward* and his Lady, or the Survivor of them, should nominate; and for want of such Nomination, then to Sir *Edward* and his Lady; and Sir *Edward* and his Lady were Lessees in Trust. The Feme sole married without their consent, Sir *Edward* died without any Appointment, and so did his Lady. The Court was of opinion, that it was not in the power of Sir *Edward* and his Lady to have disposed of this Lease, otherwise than for the Benefit of the Feme sole, if she had lived; and her Administratrix was well intitled to the Benefit of this Lease. *Cases 58. Fleming and Walgrave.*

A Trust was, That one *A.* should purchase in his own name an Annuity of 80 *l. per annum* for the Life of the Plaintiffs wife, and pay the same to her and her Assigns, and the Bill in *Chancery* was to force the Payment of this Annuity to the Plaintiff, who lived separate from his wife: It was decreed, That the husband being Assignee of the wife, and that there being no Negative words by the Will to exclude the husband from the Annuity, he could not exclude him, and so decreed the Defendant to pay all the Arrears and the growing Annuity to the Plaintiffs husband. *Cases 194. Dakins and Beresford.*

Trust for raising Money for a Feme sole if she marry with consent.

Annuity purchased in Trust for the Wife, yet the Arrears decreed to the Husband.

Diversity between a Lease for life, and a Lease for years.

Note, A Diversity between a Lease for Life and a Lease for years made to a Feme Covert, for if 1 let Land to a Feme Sole for Term of years, who taketh husband, and after 1 confirm the Estate of the husband and his wife, To have and to hold the Land for Term of their two Lives : In this Case they have a Joint Estate in the Freehold of the Land, for that the wife had no Freehold before ; but her Estate of Freehold cannot be altered by the Confirmation made to her husband and her, as the Term for years may, whereof her husband may make Disposition at his pleasure ; and this Confirmation makes them Jointenants for life, because a Chattel of a Feme Covert may be drowned, 1 *Inst.* 300. a.

Term vests in the husband by Payment of Debts.

Executor *de Son Tort* dies intestate, his Mother administers, and after takes husband, (there being amongst the Chattels of the wife as Executor *de Son Tort*, a Term for years) the husband pays so much of the Debts of the first Intestate as the Term for years is worth. *Per Curiam*, The Term for years is vested in the husband, *Sid. p. 76. Baker and Beresford.*

What shall amount to a Forfeiture of the wife's Term, or not.

By Marriage of an Husband who aliens.

Lease for years is made to Baron and Feme, provided that if the same Land shall come into other hands, than to Baron and Feme, and their Issue, that the Lord upon tender of 100 l. may enter. By *Dyer and Brook* his Entry is lawful, for it is the Act of the wife : *Weston cont'*, for it is an Act in Law, and the husband is possess *in jure Uxoris*, aliter if the wife had been dead. The principal Case in *Dyer* was ; The Lessee covenants that if he, his Executors or Assigns, alien the Term, then the Lessor to enter. Lessor makes his wife Executrix, and dies ; the wife takes husband, the husband aliens the Term, and it is debated there whether the Lessor may enter. *Baldwin* ; The

The Condition is not broken, because the husband's Estate is made by Law, and cannot be said Assignee, and so like a Tenant by the Courtesy: But by *Brown* and *Shelley*, an Assignment in Law is as strong as an Assignment in Fait; and by the Espousals the Term vests in the husband, as if it had been a Gift by the wife, and it was adjudged it was a Forfeiture, *Dyer* 6. b. 7. a.

C H A P. XXIII.

What Acts done, or Contracts made by the Wife, shall bind the Husband, or not. Six Resolutions of the Court in Scott and Manby's Case, as to that Point, and other Cases relating thereto, and the manner of laying the Action, and declaring therein.

Regularly the Contracts of Femmes Covert are void, in as much as their Powers are transferred to their husbands by the Intermarriage, *Sid. 120*. Yet in *11 H. 6. 30.* it is the Opinion of *Martin*, that if a Woman buy things suitable to the Degree of her husband, he shall be bound by it; so *27 H. 8. 25. 67 Brook*, if the things come to the use of the husband, she shall be charged by the Contract of the wife, *Sid. 114. 2 Cr. Car. 258.* and yet *Hutton, Rep. 106. Bill and Lully's Case*, the Baron shall not be charged by the Contract of the wife, *Sid. 121. Dyer 324.* It is said in *1 Roll's Abr. 351.* If a wife buy things for her necessary Apparel without the consent of the husband, yet the husband shall be bound to pay it, *Sir Tho. Gardner's Case*. But these seeming Diversities will be reconciled by the following Resolutions in *Scott and Manby's case*.

Six Resolutions in *Scott and Manby's Case*.

1. Husband shall not be bound by Assumpsit in Law upon the Contract of his wife, although for Necessaries, *Sid. 109.*

2. If the wife buys any things, and the husband does any Act precedent or subsequent to shew his assent, the husband shall be charged for it, though not by Assumpsit in Law, yet by reason of the Assumpsit in Fact, whether they are for herself, Children or Family, *Sid. 120.*

3. Though

3. Though our Law does not exclude the wife from having a Community in using the Goods of the Baron, (and so it is not Felony in her to take them) *Stamf.* 276. yet she may not dispose them; as she may not pawn them, and so inforce him to a Redemption, *Sid.* 122. If the wife play and lose 40*l.* of her husband's Money, the husband shall recover this again in Action of Trover against the Gamester, *Tr. 6 Jac. Rot.* 1717. *Rice Roy* versus *Thos. Stephens.*

Though the wife may not bind her husband by her Contract for Necessaries, yet she is not destitute of a Remedy; but Chancery, or rather the Ordinary, will do it, *Sid.* 124.

The buying of Goods in a Market overt of a Feme Covert, knowing her to be a Feme Covert, (unless in such things in which she usually tradeth by and with the Consent of her husband) bindeth not; but regularly Sale by a Stranger in a Market overt, bindeth Infant or Feme Covert that hath either in their own Right, or as Executrix or Administratrix, 2 *Inff.* 713.

If the wife buys any thing, and it is found by special Verdict that this is spent in the Household; yet the husband without his actual assent, shall not be charged; so is 21 *H.* 7. 40. *b.* If my wife buy things to keep my Household, as Bread, &c. and I do not know of this, and it is spent in my House, I shall not be charged for it, *Sid.* 126. but the Employment to the Uses of the husband, is good Evidence for the Jury to find that the husband *Assumpsit*, although it be not binding Evidence: As is the Case of a Factor, or Servant that buys Goods which come to the use of the Master, the Master shall be charged. So if the husband be in a Voyage beyond Seas, and during his absence the wife buys Victuals, or other Necessaries for her, this is good Evidence for a Jury to find that the Baron *assumpsit*, and so the Judge ought to direct

rect them; so if the Baron will not cohabit with the wife, and she buys Necessaries, this is good Evidence, &c. but this Evidence is not binding nor conclusive; but Presumptive only, as in the Chancellor of Oxen's Case, 1 Co. in Trover and Conversion, Request and Denial is a good Evidence for the party to have found for the Plaintiff; but being found specially, the Court cannot give Judgment *pro Quod* more in the principal Case. Also the husband might have contradicted such presumptive Evidence by other Proofs, as that he gave the wife ready Money to buy.

4. Admitting in such Case, that the husband shall be charged by *Assumpsit* in Law, yet if he provide particular Persons specially that they should not trust his wife, he shall not be charged after such Prohibition; and Prohibition given to the Mercer that sell a Feme Covert, and then let him trust her at his peril. As to a Man's Prohibition in general not to trust his wife, as by posting or putting her in the News-books, that none shall trust his wife, this has been void in it self, *Sid.* 119. because if such Prohibition should be good, the Law gives her a helpless power in enabling her for to contract when there is no person who may contract with her. *Sid.* 114.

5. Admitting that the husband shall be charged upon *Assumpsit* in Law for Necessaries, the finding of the Jury that the things bought by the wife are necessary to the degree of her husband is not good for the Law will that Women shall be maintained according to the Estate, and not to the Degree of the husband: But the Jury ought to have found, that they were Necessaries suitable to the Estate and Degree of the husband, or that they were necessary generally, *Sid.* 128.

6. Where Women are allowed by their Husbands to be House-keepers, and have used to buy things without ready Money for the Household, the husband shall be charged for them; for in such a respect the wife is as a Servant, *Scott and Manby's Case*.

Baron shall not be charged in Trover and Conversion for things which the wife buys, though the buying be void: But if the delivery of Goods be to a Feme Covert, not knowing her to be a Feme Covert, or to an Infant, not knowing him to be an Infant, it is otherwise, *Sid. 129. Mod. Rep. 841*.

If a Woman will not cohabit with her husband, and buys Victuals and Chattels for herself, and it is given in Evidence to a Jury that these are Necessaries for the Estate and Degree of her husband; yet this is no Evidence for a Jury to find that the Baron *assumpsit*; and there is a difference between those Women that will cohabit with their husbands, and those that will depart of their own heads.

Action was brought against the Defendant upon *Indeb. Assumpsit pro diversis mercimoniis venditis & deliveratis*; to the wife to the use of her husband, it being for her wearing Apparel. After Verdict for the Plaintiff it was moved in Arrest of Judgment, that his Declaration being laid, that the Sale was to the wife, though it was to the use of the husband, was not good, as if it had been sold to the Servant of the Plaintiff. Yet *per Curiam*, It being for her Apparel, and that suitable to her Degree, the husband was to pay for it; and so it was resolved in *Scott and Manby's Case*, 1 Vent. 42. *Dyer and East*.

In *Assumpsit* the Plaintiff declared upon several Promises, three whereof were for finding Lodging so many Months for the wife of the Plaintiff at his request, and the last Promise was *Indebitas* for Goods sold to the Defendant himself. The Defendant pleads, long before he lodged her, she went away without his consent, and lived in Adultery with some Persons

Delivery of Goods to a Feme Covert, not knowing her to be so.

How it is if a Woman will not cohabit with her husband.

Declaration.

respect of the Profits taken by Dame Dorothy and himself, should be liable to the Payment thereof. For the Tort died not with *Floyd*, as if Feme Tenor for life marries, and the husband doth waste and die, Waste lies against the wife. Feme Executrix takes her husband, that wastes the Testators Estate; a Devastant lies against the Feme after the death of the husband for the Waste of the husband, *Cases in Chan.* 81. *Gibbs* and *Smith*.

The Husband charged with the debt of the Wife for Goods.

The wife when sole bought Goods for Money, after married, and died; the Goods came to her husband's hands after her death, but the Debt remained unpaid: The Plaintiff Creditor brought a Bill to recover the Goods, and it was demurred to, but the Demurrer was over-ruled, *Cases in Chan.* 295. *Forman* and *Goodham*.

Vide *Plus infra*: Where the husband shall be punished for Torts done by the wife.

C H A P. XXIV.

Feme Covert, { Executrix.
Administatrix.

How a Feme Covert may be made Executrix, and of what things; what things the Administrator of the Wife shall have, and not the Husband, as Chobin in Action, &c. Debt recovered by Baron and Feme Executrix, and she dies, if the Husband shall have Execution. What things Feme Covert Executrix, may do without her Husband, or not. Obligor makes the Wife of one of the Obligor's Executrix, quid operatur. Legacy devised to the Wife, who is made Executrix. Whether she shall be in as Executrix, or as Legatee. Of her assent to a Legacy. Debt as Executrix not extinct by the Intermarriage, and why. Feme Executrix takes the Obligor to Husband, if that be a Release in Law. Where the Husband shall be charged with the Waste of the Wife as Administatrix, and the manner of Proceedings by the Sheriff in such Case; and whether Execution shall be de bonis propriis of the Husband. Of Actions brought by Baron and Feme as Executrix or Administatrix. Where Administration belongs to the Baron and Feme.

How a Feme Covert may make Executor, and then how she may be made Executrix.

Feme Covert may make her Testament of Goods, and make an Executor by the assent of her Husband.

A Feme Covert may make an Executor of *Choses in action* due to her, 8 Jac. B.C. Graunt's Case and so is

18 Ed. 4. 11. b. A Feme with the consent of her Husband may make an Executor of things, which her husband shall not have by her death.

She may make her husband Executor of the Goods which she hath as Executrix, if he will accept, 4 H. 6. 31.

A Feme Covert cannot make Executor without the assent of her husband, and the Administration of her Goods of Right appertains to her husband, *Oguel's Case*.

But a Feme Covert Executrix may make an Executor of the Goods which she hath as Executrix without the assent of her husband, and in such Administration appertaineth not of Right to her husband; and what she had as Executrix, she hath *aufter droit*, and not otherwise an Interest in the same. *M. 8 Jac. Graunt's Case*.

Administration of the Goods of a Feme Covert.

If a Feme Covert dies intestate, Administration may be granted of her Goods; for peradventure she had *Choses in action*, which are not given to the husband by Law, *Dyer 251.* admitted.

What things the Administratrix of the Wife shall have, and not the Husband.

Choses in action.

The wife's Administrator shall have *Choses in action* always, and not the surviving husband; as in the case of Lease or Bond: As if an Obligation be made to the use of the wife. The Case was, *Johnson* was possess'd of a Term for years, and he signs it over to *J. S.* being Brother to the wife of the said *Johnson*, to the use of the said wife: *Johnson* dies, and makes his wife his Executrix, whereupon which the said wife takes *Rob. W.* to husband, and she takes the Profits of the said Lands during the life of the

the wife; the wife dies intestate, *J. S.* as next of kin took Administration as well of the Goods of the wife, as of her first husband. By all the Judges the Administrator had now as well the Interest as the Use of the said Term, as well in Conscience as Law: but *Rob. W.* shall not have it, because it is as a thing in Action, which the Administrator of the wife shall always have, and not the husband: As if an Obligation had been made to the use of the wife, *Pop. 106. Johnson's Case.*

Feme as Administratrix to her husband brought Action for Arrears of Rent incurred in the Life of the husband; which Rent was granted jointly to Baron and Feme. *Per Curiam*, The Arrears belong to the Feme in *jure proprio*, and not as Administratrix of the husband, and the naming her Administratrix is in surplusage, *Moor 886. Dembian and Brown.*

If a Feme Executrix to *J. S.* takes husband, and afterwards the Baron and Feme brought Action of Debt upon the Obligation in Right of the wife, as Executrix to *J. S.* against *J. D.* and have Judgment against him to recover the Debt, with Damages and Costs; and when the wife dies before Execution sued, the husband shall not have Execution upon this Judgment; so that he (although he be privy to the Judgment) shall not have the thing recovered; but this belongs to the succeeding Executor or Administrator of *J. S.* *1 Rolls Abr. 889. Beaumont and Long.*

Infra.
A Lease to *J. S.* who assigned it over to *K.* who by his Will devised the same to his wife, who made her Administrator also; and she afterwards took one *W.* to her husband, and died. *W.* takes out Letters of Administration of the Goods and Chattels of his wife, and assigns it to the Plaintiff: The Question was if the wife be in as Executrix or Legatee, for until Election made she shall not have it as Legatee. But it was resolved that the said wife, Executrix to her husband, had

Arrears of Rent.

Debt on Bond by Baron and Feme Executrix, and they have Judgment, Feme dies, the Baron shall not have Execution.

Feme Legatee and Executrix, at Election.

had made a Lease by Deed, reciting thereby that where the husband was possessed in Right of his wife as Executrix of her first husband. *Per totam Curiam*. This is an exprefs Claim as Executrix; and then when the wife dies, if the husband would have advantage of it, he ought to take out Letters of Administration of the Goods of the first husband. *Vid. 1 Law. 215. Cheyne and Smith.*

Assent to a
Legacy.

A Woman is made Executrix, and after married, she cannot now assent to a Legacy, there being no interest vested in the husband. • *Contra*, Of a bare Authority given her to sell; but by *Windham* this assent, and the husband's not contradicting it, is good Evidence that he did agree, *1 Keb. 708. Cook and Bellamy.*

What things Feme Covert Executrix may do without her Husband, or not.

Feme Covert Executrix may make an Executrix without his assent.

Acknowledge
Satisfaction.

Feme Covert Executrix, without her husband, acknowledge Satisfaction of a Judgment without his Satisfaction had, it is not good, *Sid. p. 31. Lady Penner and Sir Lewis Dives.*

Feme Executrix may not give the Goods of the Testator *in pious usus*, without the assent of the husband. *Vid. 14 H. 6. 4. vid. Cook, p. 9. 43.*

In *Russell's Case*, *5 Rep. 27.* it is agreed that a married wife cannot do any thing as Executrix to the prejudice of her husband.

Two were bound to a third jointly and severally; the Obligee made the wife of one of the Obligors Executors, and deviseth to her all his Goods, and Debts and Legacies paid, and dies: The Woman Executrix administers; then the same Obligor makes her his Executrix, and died, leaving Assets to pay the Debt; then the wife dies intestate, and the Plaintiff

est administrat. de bonis non, if the Obligee brings Action and sues the surviving Obligor. It was resolved that the Action lies not: 1. When the Obligee made the wife of one of the Obligors Executrix, the Action was suspended during the Continuance of the Executorship, and then the Rule is a personal Action once suspended, is extinct if it be by his own Act, where it is by making the Woman Executrix, *aliter* by Act in Law. 2. When the Obligor made the Executrix of the Obligee his Executrix, and left Assets, the Debt was presently satisfied by way of Release, and so no new Action can be had for that Debt, *Hob. 10. Fryer and Gildridge; Moor 855. Myne Case*: But if a Feme Executrix of a Debtor takes the Obligor to husband, and after the Baron dies, this Suspension is not any Extinguishment, because it was by Act in Law, and in *autre droit*, *M. 30 & 31 El. Sir John Needham's Case, 8 Co. 136.*

Obligee makes the wife of one of the Obligors Executrix

Regula.

Obligor makes the Executrix of the Obligee his Executrix.

Feme Executrix of a Debtor takes the Obligor to Husband.

A Feme Executrix marries with a Debtor of the Testator; the husband dies, and Debt was brought against the Feme, who pleads *riens enter les mains*; and if this were Assets was the Question? *Per Curiam*, This Debt is not Assets in her hands; for by the Intermarriage the Debt which the Executrix had *en autre droit*, was not extinct but suspended; and the Action was revived against the Executors of the Baron, and compared it to *Darcy's Case* in the Commentaries, *Cro. El. 114. Crossman and Read.*

Debt suspended.

Though if the Feme Obligee take the Obligor to husband, this is a Release in Law: But if a Feme Executrix takes the Debtor to husband, this is no Release in Law, for that should work a *Devassavit*, which an Act in Law shall not work, *1 Inst. 164. b.*

Feme Obligee takes the Obligor to husband

If a Man takes to wife an Executrix, all the Debts being paid, and he hath Goods in his hands to pay Legacies, the wife dies, the husband cannot be sued for these Legacies in the Ecclesiastical Court by the Legatees; for the next of Kin to the wife may have Letters of Administration granted to him of the Goods in the hands of the husband. And therefore if such husband, after his wife's death, makes a promise, That in Consideration he had the Goods, being more than would satisfy, if the Plaintiff being Legatee would forbear to sue him for such a time, he would pay the Legacy. It is a good Consideration, 1 Bulst. 44. *Smith and Jones*.

Administratrix, *dur' minoritate* of the Daughter; Executrix made divers Bonds to the Creditors of the Testator, and then took husband. *Per Curiam*, The husband may retain so much of the Testator's Goods as amounted to the value of the Debts paid. *But Hobert*, p. 250. makes it a Question, how the Case shall be if the wife die? for then the Husband is no longer chargeable by her Bond: But it's said in 1 *Rolls Abr.* 923. If the husband in the life of the wife declare that he retains such particular Goods instead of the Obligations, although the wife after dies yet by the Declaration the Property was absolutely altered in the husband, and then the death of the wife will not divest it, *Briers and Goddard*.

Of Husband's retaining Goods.

Alteration of the Property of the Goods.

Feme and another Person are Executors; Feme takes husband, the husband doth not alter the Property of the Goods of the Testator, and the wife dies; now the other Executor shall have Action of Debt against the same husband of the said Goods, *Bridl* No. 38. p. 10.

When

Where the Husband shall be charged with the Waste of the Wife Administratrix: The manner of the Proceeding of the Sheriff in such Case; and whether Execution shall be de bonis propriis of the Husband.

If A. recover against B. Debt and Damages, and after B. dies, and Administration is granted to C. his wife, who wastes the Goods; and after she takes D. a husband, and a *Fieri fac'* is awarded *de bonis Testatoris* in the hands of D. and C. the Sheriff returns *nulla bona, &c.* And upon this, on surmise that they have wasted the Goods, other Writ is awarded to the Sheriff, *si sibi constare poterit per Inquisitionem*, that they have wasted; then to warn him to shew cause why Execution should not be *de bonis propriis*, and the Inquest find this matter, and refer it to the Court whether the husband and wife have wasted the Goods of the Testator, according to the Writ or not. Upon this special Return the Court shall award Execution *de bonis propriis*, of the Baron and Feme; for the Sheriff had returned the special Matter, and therefore the husband is to be charged for the Conversion of the wife, *M. 16 Car. 1. B. R. Knight and Hilton, Ux. versus Copping, 18 H. 6. 14. b.*

Where Execution shall be *de bonis propriis* of the husband.

Upon Suggestion of a *Devastavit* of a Feme Executrix, it was laid, that the Baron and Feme *Devastavit* and *Converter* *ad usum ipsorum*; and upon the Issue it was found accordingly: It was moved in Arrest of Judgment, that they could not convert to their own use; and so in *Trover* and *Conversion*, and *Converter* *ad usum ipsorum*, is not good. But per Curiam, Here the material part of the Issue was the Wasting of the Baron and Feme, which they might do jointly, and the Conversion is nothing to the purpose, *2 Vent. 45.*

Declaration in Waste against Baron and Feme Executrix.

Q 2

Now

Now the reason why Execution shall be *de bonis propriis* of Baron and Feme, is, the wife may have Goods as a Term, or Chattels real before the Coverture; also she may have Goods after the husband's decease; and therefore in Debt the husband is charged in Right of his wife, as Executrix, and Judgment is given against them, it shall be *de bonis suis propriis*, and good. And it was resolved, *Cro. Car.* 519. in *Mounson and Bourne's Case*, that a *Devastavit* may be by a Feme by Eloigning the Goods, as a Feme Covert may do a Tort, and be punished for it. It was held also, that if a Man take Executrix to wife, and waste the Goods, it is a *Devastavit* in the wife. And if there be a Recovery against Baron and Feme upon a *Devastavit*, if the Baron survive the wife, he shall be charged; also if the Feme survive, she shall be charged: But if the Recovery be not against Baron and Feme in the life of the wife, and she dies, the Baron shall not be charged.

Where the Husband shall not be charged.

Baron and Feme committed to the Fleet on a *Devastavit*.

Feme is Executrix of her first husband, and she administred when she was Sole, and then takes a second husband; and there is a *Devastavit* returned, and a *Capias ad Satisfaciendum* against both *de bonis propriis*, and the husband was committed to the Fleet, and so was the wife, because the Devastation of the husband shall be the Act of the wife, *Dyer* 210. may. *M.* 38 & 39 *El. B. C. Vaughan & Thomas.*

Husband chargeable with a *Devastavit* of the wife, tho' no Assets came to his hands.

A Woman is indebted by Obligation as Executrix, and had Assets of the Goods for the Debt, and she takes husband, the Debtee demands the Debt of the husband, and thereupon they submit themselves to Arbitration of all Actions and Demands; the Arbitrators may make an Award of this Debt that the wife of the husband as Executrix owed to the Debtee. And *per Coke*, in this Case, though no Assets came to the hands of the husband, yet he is chargeable for the *Devastavit* made by the wife before Coverture.

So 21 H. 7. 29. b. The husband submits all Actions and Trespasses, &c. and the Award was of a Debt due to the wife as Executrix. *Per Curiam*, This is a good Bar of the Debt of the wife, 1 *Rolls Rep.* 269. *Lumley and Hutton*.

Award of a Debt due to the Wife as Executrix.

In Debt on Obligation against J. and his wife as Administratrix: The Defendant pleads Payment by the wife after the Intestate's death, and on that Issue found *pro Quer'*: Judgment was *quod recuperes debitum* against them *de bonis Testatoris, si non, &c.* the Damages *de bonis propriis*. *Per Curiam*, This Judgment is well given; 1. Although the Plea be false, yet he is altogether a Stranger to the Testator; and therefore the Judgment shall be only *de bonis Testatoris*, and not where he pleads fully administered, which is false in his own Conscience: Although the wife hath not any Goods during the Coverture, yet because the husband is only charged in respect of the wife, and she might have Goods if she survived, and Execution might be taken against her, the Judgment is good, *Cra. Jac.* 191. *Johns and Adams*.

Judgment *quod recuperes debitum* against Baron and Feme, *de bonis Testatoris, si non, &c.* the damages *de bonis propriis*.

It is said in *Rolls Abr.* 919. If a Feme Executrix take husband who waists the Goods, the Feme dies; by the Common Law there is not any remedy against the husband: But in this Case by the Ecclesiastical Law, the husband shall be punished and compelled to make Restitution; but if a *Devastavit* is returned against Baron and Feme, and the Feme dies, yet the husband shall be charged, *Sid.* 330.

Devastavit returned against Baron and Feme; Feme dies, the Husband shall be charged.

If the husband possess of Goods in the Right of his wife as Administratrix, grants the Goods to J. S. and after the wife dies, and after a new Administration is granted to J. D. who sues the Grantee of the Goods for a *Spoliation*, in the Ecclesiastical Court, a *Prohibition* lies, *M. 11. Car.* 1. *B. R. Clark and Daniel*. So if such husband waist the Goods, and after the Wife dies, if the husband be sued in the Spi-

Prohibition against a *Spoliation*.

ritual Court for a *Spoilation*, or a waste of the Goods, a Prohibition lies, 2 *Rolls Abr.* 302.

Term extinct
in one respect,
yet remains
Assets in ano-
ther.

Intermarriage
of a Feme with
a Debtor of
the Testator.

Debt on Bond
by Baron and
Feme Execu-
trix, and they
have Judg-
ment; Feme
dies, and the
Husband shall
not have Exe-
cution, and
why.

Feme Executrix hath a Term, and takes husband, and the husband purchaseth the Reversion, the Term is extinct as to her if she survive; but as to all Strangers it shall be accounted as Assets in her hands, *Moor* 54. 1 *Leon.* 720. *Crossman* and *Reade.* In *Leon.* the Case was, *J. S.* made his wife Executrix, and died; *J. D.* being then indebted to the Testator in 60 *l.* upon a simple Contract, the wife Executrix took to husband the said *J. D.* *J. D.* made his Executor, and died: A Creditor of *J. S.* brings an Action of Debt against the wife, Executrix of *J. S.* and upon the pleading, the Matter in Question was, If by the Intermarriage of the wife with the Debtor of the Testator, the same were a *Devastavit* or not, and if the said Debt of 60 *l.* due by *J. D.* should be Assets in her hands? And *per Curiam*, It is no *Devastavit* nor Assets; for the Woman may have an Action against the Executor of *J. D.* and it was agreed *per Curiam*, that if a Man make a Debtor and a Stranger his Executors, and the Debtor die, the surviving Executor may have an Action of Debt against the Executor of the Debtor.

If a Feme Covert, Executrix to *J. S.* take husband, and after the husband and wife bring Action of Debt on Obligation in Right of the wife, as Executrix to *J. S.* against *J. D.* and have Judgment against him to recover the Debt, with Damages and Costs; and after the wife dies before Execution sued, the husband shall not have Execution upon this Judgment; for that (though he is privy to the Judgment) yet he shall not have the thing recovered, but this appertains to the succeeding Executor or Administrator of *J. S.* *M.* 7 *Car. B. R.* *Beaumont* and *Long*, vide *Supra*, *Trin.* 11 *Car. B. R.* *Jefferies's Case*, *Cro. Car.* 208, 227. after a year and day the husband brought *Scire fac'* to have Execution. But *per Curiam*

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The *Scire fac'* lies not; for the first Action was brought by the Baron and Feme Administratrix, which is *en autre droit*, and the Recovery being thereupon, is in Right of the Intestate; and the Feme being dead, the Baron cannot claim that Debt; for the Administratrix being dead, the Suit is merely determined, and cannot be revived by any but he who comes in in that Right, and so doth not the husband; and he who ought to have the *Scire fac'* might have Privy and Property in the Debt, and the husband hath no Property in it.

W. and his wife being posselt in Right of the wife of a Term, which she had as Administratrix to her first husband *C. W.* being indebted, by Contract granted the Term to *Coleman*, to the use of *W.* and his wife for their Lives, and after to the use of *Coleman* himself. *W.* is sued for this Debt and Recovery against him, and the Sheriff by *Fieri fac'* sold the Term to the Defendant. The Grant of the Term is not void by Stat. 3 H. 7. as made to defraud Creditors; for this Grant is not to avoid Creditors, for the Term being in Right of the wife as Administratrix if it so continued in the hands of *W.* and had never been granted, this was not extendible for the Debt of *W.* and if *W.* himself had it as Executor, it had not been extendible for his proper Debt, and Fraud shall not be intended except expressly found.

Term in the Wife as Administratrix, if extendible for the Debt of the Husband.

Actions. Vide Supra.

A Feme Executrix takes husband, they bring By Outlawry Action of Debt as Executrix, and recover and have the Husband Judgment; but in bar of this the Outlawry of the forfeits no Goods as the Baron is pleaded. *Per Curiam*, The Baron forfeits Wife had as nothing of the Goods which the wife had as Executrix. Executrix. 3 Bulst. 210. *Hix and Ux. versus Harrison.*

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Inde-

Indebitatus by Baron and Feme as Administratrix of *J. S.*, on account as Administratrix, and Arrangements found to Baron and Feme as Administratrix: The Defendant demurs, because it is not said, The Debt was due to the wife as Administratrix, 3 *Kek.* 396.

A Feme sole delivers a certain Sum of Money into the hands of *J. S.* the Defendant thereupon Covenants with the Feme to pay to *A. B.* 100 *l. per annum*, so long as the Money shall continue in the hands of *J. S.* the Feme takes husband, the 100 *l. per annum* is Arrear; the husband makes his Executor, and dies, and after his death the 100 *l. per annum* is an Arrear also: The Executor brings Action of Covenant upon the Indenture, and good; for the Covenant concerns the Executor because he represents the Testator, *Stiles* 140. *Pope* and *Hunt*.

By a Grant of *omnia bona & catalla sua* by Administratrix, what passeth. If Administratrix takes husband, and the husband grants *omnia bona & catalla sua*, and it is expressed in the Deed that he gives an Horse in the Name of Seller of the Goods, which Horse is Parcel of the Goods of the Intestate, as it is found by special Verdict, the Goods of the Intestate shall pass by this Grant, 3 *Abb.* 58.

Obligee made his wife Executrix, and died; and the wife being Executrix died Intestate: The Plaintiff in the Action took out Letters of Administration of the Goods and Chattels of the wife, and brought the Action of Debt on the Bond as Administratrix of the wife; whereas the Plaintiff ought first to have taken out Letters of Administration *de Bonis non Administratis* of the Testator, and so to have brought his Action, *Stiles* 225. *Leg* and *Anderton*.

Assumpsit against the wife of an Intestate in consideration of Forbearance, is not good unless she administered, 1 *Leon.* 240. *Filwicks* and *Holt*.

Where and how Administration belongs to Husband or Wife.

Administration by our Law belongs to the husband, and not to the wife's Kindred, by the Stat. 31 Ed. 3. c. 11. and the Stat. 21 H. 8. does not compel the husband to take Administration, for it is a Penal Law, and extends only to the wife and children; so 14 Rep. 51. *Oguel's Case*, Cro. Car. 106. *Johns and Jane*.

The Daughter takes husband, and dies; the Mother obtains Letters of Administration, and a Prohibition was denied, because Administration ought to be granted to the husband, and not to the Mother; and it is not like to the Case of two *in equali gradu*, and she obtains Letters of Administration, which shall not be repealed because they have executed their power, fol. 409.

C H A P. XXV.

Actions. Suits.

Abatement of a Writ or Suit in Law or Equity by Marriage or Death pending the Suit. If the Writ be put before the Husband, the Writ abates. For Plaintiff after Writ of Enquiry, and before Return marries, if the Action shall abate. For Sole depending a Bill in Chancery takes Husband, if the Suit shall abate. How it is if she be Defendant. Of Actions which the Husband may sue for Wrongs done to the Wife. Indictment by Baron and Feme, and against Baron and Feme. Where and in what Cases Wives are impleaded without their Husbands or not.

Abatement by $\left\{ \begin{array}{l} \text{Marriage.} \\ \text{Death.} \end{array} \right.$

BY Marriage : It's a Rule.

Reg.

The Taking of an husband between the *Nisi Prius*, and the *Day in Banco* is not Error, because it is but a Plea in Abatement ; but the Death of one of the Parties is Error, because by this the Writ is abated, though it cannot be pleaded, *Sid.* 143.

W. and his wife brought Case for Slandrous Words, against *H.* and his wife : *H.* the Defendant dies, the Feme takes another husband, pendant the Suit ; the Court inclined because the Defendant had by her Intermarriage changed her Name, that the Writ abated, *Stiles* 138. *White* and *Harwood*.

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If Feme Sole Plaintiff takes husband, the Writ is not abated, but abateable, 1 Leon. 168, 169.

Death or Coverture at the time of the Writ purchased, abates the Writ *de Facto*, but Coverture after makes it abateable, &c. only by Plea.

Trespas was brought by the Plaintiff, being a Feme Sole: It was tried by *Nisi prius*, and Verdict *pro Quær* and Damages. The Defendant at the day *in Banco* pleads, that after the Verdict, and before that day, the Plaintiff took to husband one J. S. and being married, demanded Judgment. *Per Curiam*, This Plea cannot be pleaded; for the Defendant hath no day to plead it, and the Plaintiff had Judgment, On Cor. 232.

Plea, at the day *in Banco*, that after the Verdict, and before that day, the Plaintiff took Husband.

Feme makes a Letter of Attorney to the Plaintiff to gain a Debt, and then marries: this is not any Countermand or Revocation of the Suit, and the Writ is not abated, but only abateable, 1 Leon. 186, 187. *Lee and Madox*.

By Death.

Action was brought by H. against Sir Tho. Pope and A. his wife, as Daughter and Heir of Sir Tho. W. ed hanging the Writ, Pope died: Hobart was of opinion, that the Writ shall not abate. But Executrix brings Action in her own Name, and the Name of her husband, and pendant the Writ, the Baron dies, the Writ shall abate, *Winch. p. 102. Holman* versus Sir Tho. Pope and his wife.

Feme pendant the Writ against her, takes husband; this doth not abate the Writ, but the Recovery against her upon the first Writ is good: But if after the Original Process sued, and before the Return she take husband, this shall abate the Writ, by *Dodderidge* in *Heydon and Miller's Case*, 2 *Rolls Rep.* 53.

Baron

Several Writs
of *Scire fac'*
by Baron and
Feme, against
Terretenants,
Baron dies ;
Quere if Writ
abate against
all.

Death after
Verdict, and
before the day
in *Banco*.

The Wife is
put in the
Writ before
the Husband.

Ejectment.

Baron and Feme bring several Writs of *Scire fac'* against Terretenants in divers Counties : Judgment is given against some of them by default, and pending the Pleas of others ; and before any Execution the Baron dies, *Quere* if all the Writ abate as well against those against whom Judgment was given, as against those who have pleaded, *Hob.* 287.

Trespas against Baron and Feme ; after Verdict *pro Quer'* the Plaintiff died, between the day of *Nisi prius*, and the day in *Banco*, in 11 H. 6, 7. It is held by all the Court that the Death of the Plaintiff or Defendant, after Verdict by *Nisi prius*, and before the day in *Banco*, shall abate the Writ or Bill : but the Court doubted in the principal Case, because it is in an Action of Trespas, which is but personal, and is joint and several ; and it is clear, if the Feme had been dead, and the Baron survived, Judgment should have been entered against him, and the reason is the same, that the surviving should be chargeable for the Trespas, *Adjournatur*, *Cro. Car.* 509. but in *Co. Fac.* 356. in the Case of *Ridgley* against *Lee* and his wife. In Ejectment the husband died since the *Nisi prius*, and before the day in Bank. And *per Curiam*. Because it is in the nature of a Trespas, and the Feme is charged for her own Fact, the Action continues against the wife, and Judgment should be entered against her Sole, because the husband was dead.

The Writ shall abate if the wife be put before the husband, 2 *Leon.* p. 59.

A Writ brought against Baron and Feme abates by the death of the Feme, though after Verdict, *129.*

Ejectment *versus* Baron and Feme, and though they are one Person in Law ; yet if Baron die, the Plaintiff may proceed against the wife.

If a Feme Sole bring Trespass and Recover, and a Writ of Enquiry of Damages is awarded, and before the return of it the Plaintiff takes husband, and after the Writ is returned, and Judgment given upon it without any Exception taken by the Defendant, he shall not have advantage of this in a Writ of Error, because the Writ was but abateable by Plea, 1 Roll's In. 781. *Smith and Odibam.*

Writ abateable by Plea.

Abatement in Chancery Suits.

If a Feme Sole takes husband *pendente Lite*, the Feme by her own Act hath abated her Suit, otherwise when she is Defendant.

If a Feme Sole have a Bill depending in the Court of Chancery, and pendent the Suit, takes husband; by this her own Act, her Suit is abated, and if she and her husband will have the effect of the Suit, they must both join in a Bill of Reviver: But if a Feme be in such Case be Defendant and marries, in that case the Plaintiff may go on with his Suit, for the Marriage is no Abatement or Impediment because she is Defendant.

If the Plaintiff exhibits a Bill against a Feme Sole, whereto she maketh answer, and after marrieth; the Plaintiff may proceed against her and her husband, without any Reviver, and her husband shall be bound by that answer she made before Marriage, in regard he shall not be admitted to take advantage of her own Act; contrary where a Woman Sole exhibits her Bill, to which the Defendant answereth, and then marries her husband and she cannot proceed against the Defendant without Bill of Reviver.

If a Man and his wife exhibit their Bill of Complaint, whereto the Defendant answereth, and the Man dieth, the Woman shall be at her Election, whether she will exhibit a new Bill, or proceed upon the former,

former, and the Defendant shall be bound by the answer made to the Man and his wife.

Baron and Feme join in a Bill for a Duty due to the wife; she dieth before the hearing, the Baron after her decease exhibited a new Bill, and served the process to hear Judgment; because the Defendant was not called to answer the hearing was put off.

If a Man exhibit a Bill against a Man and his wife for a Matter which wholly concerneth the wife, and both answer, and after the Baron dies, this is an abatement of the Suit that the Plaintiff cannot proceed against the Feme without Reviver; for the Feme shall not be constrained to abide by that answer which she made with her husband, because she was then under the Power and Coercion of her husband, and he being dead, and she seised and possessed of the thing in question as her former Estate, she ought to make new answer, otherwise ought not to be bound in Equity; but if she abide by her answer made with her husband, then the Plaintiff may proceed, and have a Decree to bind her.

If Baron and Feme in the Right of the wife exhibit their Bill upon a Matter in Equity, whereunto the Defendant answereth, and the Feme dies, this is in some cases an Abatement of the Suit. As for instance, If the wife be Guardian in Socage, and take a husband, yet the Feme continues Guardian; and if Baron and Feme in that Capacity exhibit their Bill in any Matter in Equity, and the wife dies, it's an abatement of the Suit.

Of Actions which the Husband may have for Wrongs done to the Wife. Vide Indictment.

Trespas. de Uxore rapta & abducta cum bonis &c.
Vide Dyer 236. pl. 10. 2 Cr. 502. 538. 2 Inst. 184.
434. Fitz. N. b. 84. W. 1. c. 34. 6 Rep. 46 Dyer 207.

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The Stat. 6 R. 2. gives Appeal of Rape to the husband where the wife consents to the Ravisher; but the husband in Reputation shall not have this Action: but where it is a Marriage voidable till the Marriage be annulled, the husband may have Action within the Statute; but if the wife take two husbands, the second husband may not, because he is not *Baron de facto* or *de jure*. *Lit. Rep. 75.*

Indictments. Vide Information and Offences.

Indictment for Assault and Battery made upon *Baron and Feme*, and for pulling down the House of the husband. Exception was taken because the Indictment did conclude *ad damnum ipsorum*, whereas it should be *ad damnum* of the husband only. But *per Curiam*, The Indictment is good though *ad damnum ipsorum* is left out, *Stiles, p. 155.*

Action on the Case in nature of a Conspiracy was brought against *A.* and *B.* his wife, for that they *maliciously* conspired to indict him for stealing a Woman's lute, *de bonis & catallis* of *B.* the wife; and not guilty was pleaded, and Verdict for the Plaintiff. Though a Feme Covert may not have any Goods, (Goods of the Wife) how to construe after a Verdict. being after Verdict, it shall be intended to be as it may be, (*viz.*) that these were the Goods of the Wife, *dum sola fuit*; and that the stealing was intended then, and not whilst she was a Feme Covert, *Hall Abr. 3. Skinner and Parker.*

When Wives are indictable without their Husbands, or not.

It was a Question in *Fenner's Case*, Whether a Feme Covert may be indebted without her husband, for forestalling or ingrossing *contra formam Statuti*, and no opinion was given, because the Indictment was

was *F. Spinster alias diſſ*, wife of *F.* ſo that it does not appear properly by the Indictment, that ſhe is a Feme Covert, becauſe this which comes after the *alias diſſ* is not parcel of the Name. But it was agreed, that for greater Offences, as for Recuſancy, Felony, wives are indictable without their husbands *Sid. 410. Femer's Caſe*; but the husband being in Court, they ſet a Fine upon him.

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C H A P. XXVI.

Joinder in Action.

Where and in what Actions Baron and Feme shall join, and where and in what Actions not. In what Cases the Husband only shall have the Action. Diversity between an Action which affirms Property, and which disaffirms Property: Four general Rules of the Baron and Feme's Joinder in Action, and Cases under each to direct where Baron and Feme must join in the Action, or it may be brought by the Husband only. Particular Actions, as Trover, Indebitatus Assumpsit, Account, Forfeitedon, Ejectione Firme, Actions for Rent, Recous, Actions for Tithes, Covenant, Waste, Debt on Bond or Contract, Trespass, Battery, Escape, Action on the Case sur Assumpsit, Actions on the Case for Torts, Forcible Entry, Writ of Error, &c. and the manner of Declaring in such Actions. Of Actions brought by a Feme Covert against a Feme Covert. In what Cases a Feme Covert is enabled to sue without her husband. Of a Feme Sole Merchant.

Where and in what Actions Baron and Feme shall join, and where and in what not.

[Shall consider,

1. In what Cases the husband only shall have the Action.
2. In what Cases Baron and Feme must join.
3. Where the husband may join his wife with him or not at Election.

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In

In what Cases the husband only shall have the Action.

Reg.

Diversity between Actions which affirm Property, or disaffirm it.

Trover.

Of Goods lost before or after the Marriage.

There is a Diversity between Actions which affirm Property, as Replevin, Detinue, &c. for those ought to be brought in the name of the husband only, because the Property is affirmed, and Actions which disaffirm Property, as Trespass, Trover, &c. for those ought to be brought in both their Names, because they are founded in *Tort* made before Coverture. *Sid. 172. Powis and Marshal*; therefore Trover by Conversion by Baron and Feme, for Trover supposed before the Coverture, and Conversion afterwards. Though two Justices in that Case were of opinion that the Action ought to be brought by the Baron alone, because the cause of Action is after the Coverture, and subsequent to the Marriage, *Beaumont and Gray's Case*. If Trover be laid to her before Marriage, which was the Inception of the cause of Action, the wife may be joined; *aliter* if the Conversion be laid after the Marriage. In the first Case the husband may bring the Action alone, or jointly with the wife. If one hath the Custody of a Woman's Goods, and afterwards marries her, she may join Detinue with her husband, for his use in Bailment; the Proprietor is to some Purposes in Possession, and to other Purposes out of Possession, *1 Vent. 263 Keb. 329*. Trover after the Marriage of Goods lost and converted before, is well brought by Baron and Feme, as on Bailment of Goods before Marriage they are in Possession as to Trespass, or out as to Detinue; to some Purposes this is but as a thing of Action, and the Property not altered by Marriage.

Baron and Feme Executrix bring Trover for Goods of the Testator found and converted, it is well brought for the Possession of the wife as Executrix, is also for the Possession of the husband, and the Damages may

red shall be to the Estate of the Testator, and so may concern them both, *Stiles* p. 48. *Fremling's Case*.

Shuttleworth and his wife brought a Trover and Conversion, and count that they were the Goods of the wife *dum sola fait*, and that she lost them, and the Defendant found them, and after they intermarried; and after the Defendant converted them, and it was adjudged against the Plaintiff, because notwithstanding the Trover of the Defendant this Property continued in the wife, and then by the Intermarriage the Property was in the Baron, and then the Baron ought to have brought this Action alone without the wife, cited 1 *Rolls Rep.* 45.

Of the Goods
of the Wife
dum sola.

Trim. 6 Jac. Rot. 1717. Ray and Stephens; Action of Trover by the husband for Money, which the wife had lost at Cards, and Judgment was for him though she plaid in his absence, yet he may have Action for the Money won by her.

For Money
lost by the
wife at Cards.

If the Goods of a woman are taken, and the woman after marries, the husband Sole shall have *Replevin*, *Fitz. Rep.* 43.

Replevin.

In all Cases where the wife shall not have the thing when it is recovered, neither sole to her self nor joint with her husband, but the husband only shall have it, there the husband sole shall have Action without the wife to recover it: As the husband shall have Action sole *per Stat. 5 R. 2.* for entering into the Lands of the wife, 38 *H. 6. 3.*

Regu.

He shall have a *Quare Impedit* sole, 38 *H. 6. 3. 4.* in Trespass for taking the Charters of the Inheritance of the wife, 38 *H. 6. 4.*

Baron shall have Trespass sole for Trespass on the Land of the wife, 38 *H. 6. 3.*

The husband sole shall have an Action for words spoken against his wife, and if the wife be joined with him, Judgment shall be arrested, *Sid. 346.* but they must be such words which are only actionable in respect of Collateral Damages.

Words.

Baron and Feme may not bring Trespass of Assault and Battery of the wife, but the husband ought to bring the Action alone, because whatever Damages should be recovered would go to the husband only, *Stiles p. 52.*

Reg.

This Rule is in 3 *Bulfr.* 163. *Bret and Cambleland* : It is a good and sound Rule, That which the husband may discharge alone, and of which he may make Disposition to his own use, and where the husband may have the sole Profit of, that which is recovered ; for the Recovery of this he may have an Action in his own name without his wife, as Constant. *Vide Infra.*

Reg.

For Personal things Baron and Feme cannot join : But for Personal things in Action, it is in the Election of the husband to join his wife or not. And upon a Judgment given in Trespass by Baron and Feme, of their Close broken, and Corn carried away, it was reversed, *Cra. El.* 133. *Arundel and Short* : So is the Rule in *March*.

Where Baron and Feme sue for Personal things done to them, they shall not join ; but where they have a joint Interest as in Case, *Quare Impedit*, they shall join, *March* 47.

Reg.

Actions for Torts which survive to the wife at the death of the husband, the wife shall join, and in no other case. Baron and Feme bring Trespass for the Battery of the wife, and Tearing the wife's Coat *ad damnum ipsorum*. *Per Curiam*, The Action for the Tearing the Coat ought to be in the name of the Baron only ; for it is the Goods of the Baron, and this had special Damages found by it self, and then it is *ad damnum ipsorum*, which ought not to be, *Sid* 224. *Staunton and Ux.* *Vide Hobart.*

Reg.

In all Cases so long as the first Contract, or specialty made to the wife *dum sola*, continues, she shall join, for as much as if she die, the Baron shall not have Action for it, but the Administrator to her.

And therefore in Action on the Case *sur Assumpsit*, the Plaintiff declares that the Defendant being in Debt to the wife of the Plaintiff *dum sola*, he assumed to pay the Plaintiff; and he further declares, that he being in Debt to the wife of the Plaintiff, &c. in other Sums, he accounted with the Plaintiff, and was found in Arrears so much, which he promised to pay: And after Verdict *pro Quer'* Judgment was awarded *causa qua supra*; but if the husband declare that the Defendant accounted with him for Money due to the wife *dum sola fuit*, and was found in arrear, which he assumed to pay; and in consideration also that the Plaintiff would forbear until such a time, he assumed to pay: In the first Case it is ill after Verdict, because the first Contract continues, and the wife ought to be joined; but in the second Case the Action is founded upon a new Contract, which changeth the first by the consideration of Forbearance, and therefore in that Case the Action is well brought by the Baron Sole, *Sid.* 299. *Tyrrel and Bennet*.

L. (the Plaintiff) married a Feme to whom Money was due *dum sola fuit*, and the husband and the Debtor came to account for the Money. The Debtor being found in Arrear promifeth to pay the Money due upon the account, to the husband at a certain day; and for not performing his Promise, Plaintiff brought Action on *Indebitas' Assumpsit*. *Per Glin, G. J.* It is true the Accompt alters not the nature of the Action, but here the Verdict finds there was a special Promise made to pay the Money to the husband; and here is a distinct day set for the Payment of the Money, and the Consideration is good; for here is a Debt due to the husband, and he may release it: And the Doubt made by the Jury is, Whether the Action be well brought by the husband alone? Here is a Promise made to the husband, and he hath brought the Action as if the Defendant were indebted to him; yet he is not indebted to him generally,

Accompt alters not the nature of the Action of *Indebitas' Assumpsit*, but if the Jury find a special Promise, *Q.*

rally, but *sub modo*, (viz. *jure uxoris*) but it was not resolved, because the Writ of Error was ill, *Stile Rep.* 473. *Coney and Leaves*.

Covenant.

If *A.* conveys Land to *B.* in fee by Indenture and Covenants, with him, his Heirs and Assigns, to make any other Assurance of it upon request, for the better Settlement to *B.* his Heirs and Assigns; and after *B.* conveys this to *C.* in fee, who conveys this to *D.* and his wife, and the Heirs of *D.* and after *D.* requires of *A.* another Assurance, according to the Covenant, and he refuseth; the Baron Sole without the Feme may not have Action of Covenant as Assignee to *B.* because he and his wife are Assigns, and therefore ought to join in the Action, *P. 14 Car. B.R. Middlemore and Goodale, Cro. Car.* 503.

But in most other Cases out of the foregoing Rule, the Baron may join the wife with him or not, at Election.

But for the fuller Illustration of this Subject, (wherein our Books seem to vary) I shall treat of the particular Actions brought by Baron, or Baron and Feme; and shew how the same are laid, and the Pleadings thereupon.

And first of Actions which are real, or favour of the Reality.

Formedon.

Formedon in Reverter brought by Baron and Feme, the Writ must conclude to the Feme only. The Case was, *Robert Earl of Essex*, and *Frances* his then wife, by Fine gave Lands to *W. G.* and *F. M.* and the Heirs of the said *W.* to the use of *Eliz. Sidney* Daughter and Heir of *Sir Philip Sidney* Kt. and in default of such Issue to the use of the said Lady *Frances*, and her Heirs; *Et que post mortem præd' Eliz. præfat' Franciscam revertere debent per firmam donationis præd' ac vigore Stat. Et eo quod præd' Elizabetha obiit sine hærede de corpore suo exente*: And the Earl

and Countess counted accordingly: The Defendant Vicount Lisle pleaded in Abatement of the Writ, that the said Countess at the time of the death of the said Elizabeth, was Covert of the Plaintiff her now husband; so that the Right of the said Tenements, *si quod, &c.* to her husband and hers, did revert; and so by the said Writ it ought to be supposed: Demandant demurs, and Judgment was, That the Writ was sufficient. The Differences are fine: If it were a *Formedon* in Descender upon a Descent to the wife, there the Descent in the Writ must be made to the wife alone; for the Descent follows the Blood, and so that the Baron is a Stranger. But in a *Formedon* in Reverter, wherein already nothing is invested, but the Right only returns; there it may be laid to Return, either to the wife alone, or to the Baron and Feme.

But in a *Cessavit* by Baron and Feme, or a Writ of *Ejectment*, or a *Consimili casu*, or Action of *Waste*, because there is vested in them a Seigniorship or a Reversion actually, and the Land holden, or the present Estate to return, is to come in Possession; in those Cases the Reverter is to be made to them both, *Et Clanrickard, Hob. 1. 2.*

If a Disseisin be made upon Baron and Feme in the Lands of the Feme, in Action brought to recover this Land again, the Baron and Feme must join, *1 Bulst. 21.*

If a Feme recover in Assise, and after take Baron, and they are re-disseised, the Baron and Feme shall have a Redisseisin, because the husband joineth for Conformity, and it is in the Right of the wife who was disseised before, *1 Inst. 154. b.* though the Statute saith, *iidem Disseisitores.*

If W. and M. his wife were disseised of the Land he held *in jure uxoris*, and dispossessed of his Goods; in Assise *per* by Baron and Feme, Judgment was given for them both, *damna pro disseisina 100 l. and pro bonis*

bonis 100 Marks; Judgment was reversed for the 100 Marks, because the wife had nothing in them, 2 *Inst.* 236.

Quare Impedit.

In *Quare Impedit* Baron and Feme shall join, and yet the Avoidance goes to the Executors of the Baron, *Lit. Rep.* 285.

Ejectione Firme.

In *Ejectione Firme*, and Ravishment of Ward, the wife shall join, *Lit. Rep.* 285.

Pur Rent. Vide Avowry.

Avowry.

In Avowry for Rent in the Right of the wife, they ought to join, 4 *H. 6.* 14. as if Rent be due to the wife before Coverture, she and her husband must join in the Avowry.

In Replevin the Defendant avows, because his ancestor was seised in Fee, and let the Land *in quac.* for years, rendering Rent, and for Rent due to him and his wife in Right of his wife, he avows the taking; after Verdict for the Avowant Exemption was taken, because the Baron Sole avows, and doth not join the wife with him; whereas it appears the Rent is due to him and his wife, and he ought not to sue in his own name only: But *per Curiam*, Because he shews the Truth of the Matter what it is, and doth aver the Life of the wife, and so the Distress well taken by him, and the Rent due to him it was adjudged that the Avowry was good enough, *Cro. Jac.* 441. *Wife and Bellent.*

Note, *Rent is as a Chose in Action.* If a Man doth marry a wife which hath a Rent, if the wife dies before the husband hath recovered it, he can have no remedy to recover it after the death of the wife; for it is merely a thing in Action, and of the same nature as an Obligation which is made by a Feme Sole, who takes husband and dies, 1 *Bulst.* 132.

Vide

Vide Rescous.

In Replevin the husband avows Sole for Rent Ar-
 rear to the wife *dum sola*: It's well enough if the
 wife were made the Defendant there they must both
 Avowry by the Husband
 Avow, 2 Cro. Jac. 3. 3 Keb, 647. Duke of Albe-
 marle and Cutler.

The husband distrained for a Rent Charge in Fee,
 granted to his wife for Arrears *durante viduitate* of
 the wife, and upon *Rescous* he brought the Action a-
 lone, and good, or at his Election he might have
 joined his wife with him, Cro. El. 459. Fenner's
 Case.

For Tithes.

Action of Debt upon the Statute of 2 Ed. 6. by
 Baron and Feme for not setting forth of Tithes; the
 Baron and Feme may join if the Baron be seised in
 Possession of the Rectory in the Right of the wife,
 or in Jointure; and upon Writ of Error Judgment
 was affirmed, Moor 912. Wentworth and Crisp: So
 On El. 608, 613. Baron and Feme possess in the
 Right of the wife as a Termor, they may join because
 the wife is Proprietor, and the Action is given to the
 Proprietor or Termor. Tithes.

An unmarried Woman being Proprietor of a Par-
 sonage took husband, the husband may not sue for
 the trouble Damages on the 2 Ed. 6. without his wife;
 for the Baron is not intended Proprietor as the Sta-
 tute intends, but the wife, 2 Brownl. 9. Ford and
 Emery's Case. Proprietor.

Covenants.

A. covenants with B. and his Assigns, for further
 Assurance; B. assigns to Baron and Feme; they must
 join

join in the Action of Covenant. *Vide supra, Middlemore and Goodale's Case.*

Baron alone may bring Covenant real on a Breach during Coverture of a Covenant made to the wife *dum sola*, 1 *Keb.* 20.

Debt for Rent
by the Baron
after the Term

Lease for years was made to B. Defendant residing Rent, afterwards the Reversion of this was granted to the Plaintiff and his wife; the Term for years attorns, the Term ended, and for Rent Arrear the Baron brought Action of Debt alone. He agreed, had the Term continued, he ought to have joined his wife with him. And *per Curiam*, The Action of Debt is well brought here, in respect of the nature of the thing by him to be recovered, which is as a Sum in gross, and the thing to be recovered is the Rent which the Baron alone is to have: The Action generally brought is good; but had the husband brought the Action as Assignee, by Assignment made to him alone; whereas the Reversion was granted to him, and his wife jointly, that had not been good, 2 *Bulst.* 234. *North and Wyard*, 1 *Roll. Rep.* 51. *Mesme Case.* In *Replevin, Avowry* is made for Rent due to the Baron and Feme, and it appears that part was due to the wife before Marriage, and part after: It was said that the Avowry ought to have been for that part of the Rent due before Marriage, and *a retro fore dum sola fuit*; and this had been the surest way: But *per Curiam*, it is good enough; but the Pleading the Avowry as made by them both, is good in Law; in as much as the whole Rent is now due to them both; for the Rent was due to the wife *dum sola fuit*, and so the term continued at the time of the Marriage, and now by Marriage this is also made the Debt of the Baron, and the same by Marriage is due to him as well as to the wife, 1 *Bulst.* 136, 137. *Bowles and Peeres.*

Avowry.

It's said in 2 *Keb.* 712. the Defendant avows by Where the
Denise of Rent to *Jane Doe*, who marries: Judg- Wife is no
ment was for the Avowant, notwithstanding the Party in the
Avowry be in *jure uxoris*, and the wife no Party; for
Avowry.
unless she be made a Defendant in the Replevin, she
need not be Party in the Avowry, *Osborne and Whit-*
ington's Case, and 2 *Cro. Wise and Bellent's Case*
cited.

If a Lease be made by Baron and Feme of the wife's By Baron a-
Land, rendering Rent, the Baron may bring an Action lone.
alone for the Rent; and quære if they may join,
2 *Bulf.* 21.

Reversion granted to Baron and Feme, and to the
Heir of the husband; there is a Lease in being and
Covenant that the Lessee shall repair; for not repairing
the Plaintiff brings this Action without his wife,
whereas the Feme hath an Estate therein as well as
the Baron. *Sed Per Curiam*, The Action being per-
sonal, and Damages only to be recovered, the Baron
may have the Action solely, or join the wife if he
please, *Cro. Jac.* 399. *Sir J. Bell and Cumberland.*
On Statutes.

Baron and Feme joined in Action on the Statute
of Labourers, and the Writ abated.

On the Stat. 2 *Ed.* 6. of Tithes. *Vid. supra.*

Debt was brought by *B.* and his wife, against *E.* Debt for rent.

In Arrears of Rent upon a Lease for years made by
the Feme, and her first husband, to the Defendant
by Indenture. The Defendant pleads, That the An-
cestor of the first husband was seised in Fee, and that
it descended to the first husband, and he was Sole
Seised; and so the Feme had nothing at the time of
the Lease made. The Plaintiff demurs: *Per Curiam*,
The Plea is good. It is true, when two join in a
Fine or Matter of Record, he who accepts of them is
concluded to say that both gave it; but where it is by
Deed, it is otherwise, for that cannot enure from one
by way of Interest, and from the other by way of
Estop.

Pledg.

One Deed cannot enure from one by way of Interest, and from another by way of Estoppel where both join.

Estoppel, for one Deed cannot enure to two interests : Also when two join in a Deed, and the one only hath the Interest, it enures by way of Confirmation from the other, and not by way of Estoppel. But here this can neither be by way of Estoppel, nor a Confirmation ; for the Deed is utterly void as to the Feme, she being Covert, and it cannot be an estoppel, because an Estoppel ought to be mutual between both parts, and the Deed of a Feme Covert cannot estop her, *Cro. El. 700, 701. Brereton and Ewens*.

Q. Elizabeth made a Lease of certain Mills for years to *W. Cumberland*, with Covenant to renew the Reversion comes to the King, who did grant it to Sir *John Brett*, and his wife ; and for the Breach of the Covenant in the Letters Patents, for not renewing the Mills, the husband alone brings the Action. And *per Curiam*, It is well brought, and he might have joined the wife with him if he would, 3 Bul. 163. *Brett and Cumberland*.

Baron and Feme join in Covenant, and the Action was brought against them both, and it abated because it shall charge the husband only, 24 *Edward 3. 38*.

S. and his wife seised of Land to them and their Heirs of the Baron, let by Indenture to the Defendant wherein he covenants with him, and with the Defendant and Assigns of the Baron to repair ; Husband and wife conveyed the Reversion to the Plaintiff, who was a Covert, and concludes his Declaration *per quod ei accrevit*, as Assignee of the husband, and does not the wife to be dead ; yet good because it was brought by the Assignee of him who had the Interest, and the Estate for Life, being transferred in him is drowned, *Cro. Car. 285. Major and Taber*.

Waste.

Lease for Life is made to one, the Remainder to Baron and Feme, and to the Heirs of the Baron: Baron and Feme may join in Action of Waste, 17 Ed. 3. 7. is if Baron and Feme during the Coverture make a Lease, and Waste is committed.

Error of a Judgment in Waste against Tenant for years brought by Baron and Feme, of a Moyety, being seised in Reversion to them and his Heirs *ad Exheredationem* of them. *Per Curiam*, They must join in the Action, but the Conclusion must be *ad Exheredationem* of him; but the Original not being certified, it's well enough. 2. Damages are given to the Baron and Feme. Which *per Cur'* is ill, and should have been amended in Bill; but now it is too late, and Judgment was reversed, 3 Keb. 125. *Curtis and Bourne*.

In a Writ *post* by Baron and Feme upon a Lease by the wife, for her own life, before the Coverture, the Court shall suppose *ad Exheredationem* of the wife, as she had the Reversion, and shall enter for the Forfeiture, 42 Ed. 3. 18.

So if Baron and Feme bring a Writ of Waste for the Inheritance of the wife, the Writ ought to be *ad Exheredat'* of the wife; for if it be *ad Exheredationem* of the Baron and Feme, the Writ shall abate, 11. 6. 9.

In Action of Waste in the *Tenuit* he is to join the wife with him, because this is in the Realty, and the *dominium vastatum* is also there to be recovered.

Debt on Bond.

Obligation made to a Feme Sole, who takes husband, and dies; living the Baron, he shall not have the

Waste.

the Obligation, nor any means now to recover the same Money due upon it; for this is a thing in Action, the Benefit whereof cannot be had but as in the Right of the wife, which is lost by her Death, 1 *Bulst.* 137. *Bowles and Paine's Case*, *Noy* 149. *Stiles* 208. but he may administer and have it.

Bond is made to a Feme Sole, who married, her husband must join with her in the Suit; for if Cause of Action arise before Coverture, though but in Trespas where Damages are only recoverable, they must join, 1 *Keb.* 440. *Hardy's Case*.

Pleads.

If a Bond be made to a Feme Covert, and her husband disagree, the Obligor may plead *non factum*, for by his Disagreement the Obligation is void, 10 *Rep.* 119. *Whelpdale's Case*.

Ad damnum ipsorum.

Debt by Baron and Feme upon a Bond made to the wife *dum sola*, *ad damnum ipsorum*, and paid, and it is the usual way in such Actions to deduct, and the Money due upon the Obligation not being paid to the wife while she was Sole, it was a damage to her; and now being Covert, it is a damage to the Baron also, and so it is *ad damnum ipsorum*, *Stiles* 134.

If a Bond be made to Baron and Feme, the Baron alone for this may have an Action of Debt, 3 *Mod.* 163.

Debt on Bond to the Wife *dum sola*, they must join.

Action of Debt on Bond to the wife *dum sola* brought by the husband only without her, is not good: For if Cause of Action arise before Coverture, though but in Trespas, where only Damages are recoverable, they must join; so in *Indebitatus* on Money due from the wife *dum sola*, on account being brought against him alone, Judgment was reversed, 1 *Keb.* 440. *Hardy and Robinson*.

Debt for Debt, Damages and Costs, recovered by B. and his wife, *modo superstitite*, against the Defendant; and because the wife was not named in the

Action.

Action, the Defendant demurred, but the Action well lay *per Cur^o, Cro. El. 844. Butler and Delt.*

A. makes a Bond to Baron and Feme, Baron dies, the wife administers, and brings Debt on the Bond as Administratrix; she dies before Judgment, and her Executor brought Debt upon that Obligation. It lies not. It was in her a sufficient Election and Waiver, and that personal Duty being a Chose in Action may well lie in Jointure between Baron and Feme, *Noy 149. Norton and Glover.*

Obligation made to Baron and Feme, the better opinion is, that the Baron may bring the Action on this Obligation alone in his own name, or he may join the wife at Election, *Stiles p. 9.*

Joinder or not at Election.

Debt on Account.

Baron and Feme assign Auditors to the Receiver of the Feme before Coverture, and found in Arrearages, they ought to join in Debt upon this, for the Debt was before the Coverture, and it was but put in certain by the Auditors, *15 H. 4. 9.*

Debt lies by the Baron only for Debt, Damages and Costs, recovered by the Plaintiff and his wife, *modo superflite, Cro. El. 844.*

Debt on Bond to P. and K. *ux. ejus*, made to the Judgment. *Id. R. dum sola fuit*, and Verdict and Damages assessed to Baron and Feme *ratione detentionis debiti* and good, for the Damages shall be to both, *Cro. El. 159. Gurney and Ux. v. Sir Ed. Cleare.*

Baron alone may bring Debt upon a real Contract made to the wife *dum sola fuit*, and broken during Coverture, *1 Keb. 20.*

On real Contract.

If Baron and Feme bring Action of Debt for Debt due to the wife, and recover, the Feme dies, the Baron may bring a *Scire fac* to execute this Judgment; for the Debt being recovered, the Baron after the death only.

Scire fac upon a Judgment recovered by Baron and Feme, brought by the Baron only.

death of the wife shall have it; but if the Feme be Administratrix to her former husband, and Baron and Feme bring Debt upon a Bond due to the testate, and had Judgment to recover the Debt and Damages, and Feme dies, and after year and day past, the Baron brings a *Scire fac'* to have Execution, it lies not, because it was a Debt demanded by the wife *en auter droit*; and though they recover, yet she dying before Execution, the Debt remains to him who takes Administration in Right of the testate; and although the Baron be Party to the Judgment, yet he hath no Property in the Debt, neither he who ought to have the *Scire fac'*, must have Life and Property to have the Debt, *Cra. Car. 108. Beaumont and Long. Vid. p. 227, 464.*

For award
Money.

If Award be made that 7 *l.* shall be paid to a Feme Covert, and 13 *l.* to the husband, the husband shall have an Action for all the Money, because it is a thing as comes in the Coverture; as if Baron and Feme make a Lease reserving Rent, the Baron shall have Action for the Rent Arrear. If the next Avoidance be granted to Baron and Feme, the Baron Sole shall have it, *Lit. Rep. 13.*

Trespass. Battery.

Baron and Feme bring Action of Battery for the Beating of him and his wife: The Writ shall alone, because the wife cannot join for the Battery of the Baron, and the Baron cannot have Judgment alone, because the wife is joined with him in the Original. But the Baron and Feme shall have Judgment for the Battery of the wife, for this is but one Judgment. *1 Rolls Abr. 782.*

Baron and Feme brought Action for the Beating of the wife, and *ad damnum ipsorum*, it is good because it is such an Action as may survive to her alone.

and cannot be otherwise, *Sid.* 387. *Horton* and *Ux.* *vers.* *Byles.*

Trespass of Battery by Baron and Feme, and Verdict. Declaration. It was moved in Arrest of Judgment, that the Declaration was by Baron and Feme for an Assault and Battery made to the wife, and they also declare that the Defendant, *alia enormia eis intulit*, which ought not to be, but *ei intulit*; for the Wrong being a personal Wrong done to the Person of the wife only, cannot be said to be done to the Baron, to which the Court agreed, *Stiles* p. 236. *Watts* and his wife *vers.* *Lord*; but *Cro. Jac.* 664. *Tomlins Case contra*, because it is but Form, and the Baron may have Wrong by his wife's Battery; and so (*eis*) is good.

Trespass of Assault and Battery by Baron and Feme, Declaration. and taking of an Horse; and the Declaration is *ad lammum ipsum*. *Per Curiam*, The Baron and Feme cannot join in this Action, but ought to bring several Actions, for the Wrong done to each was several, *Stiles* 130. *Stradling* and his wife *vers.* *Boren*.

Baron and Feme brought Trespass and Battery for Verdict was, so beating them both; upon not guilty pleaded, the much damages Verdict was for so much Damages for beating the for beating the Baron, and so much for beating the wife: On motion to arrest Judgment, the Court said the Plaintiff should release Damages for beating of himself, and Wife. bearing the Judgment for the other, 1 *Vent.* 328.

Trespass of Assault, Battery and Wounding the husband and wife; on not guilty, the Verdict was as Verdict. the wife guilty, & *quoad resid.* not guilty. It was moved that Baron and Feme could not join in an Action for beating them both, *Cro. Jac.* 355, 655.

That there is nothing found as to the beating the husband, and so it is an imperfect Verdict, *Et quoad lammum* shall extend only to the other Trespasses as the wife, *Telv.* 106. *Per Curiam*, The Verdict

hath cured this Mistake in the Action, *Stiles 98*
2 Vent. 29. Hooker's Case.

Declaration.

Now the Case in *Cro. Jac.* is, Trespass by Baron and Feme for Battery done to them both, and found for the Defendant, and certified he did it as Comble, and double Costs prayed by *Stat. 7 Jac. c. 1*. It was moved that the Declaration was ill, because Baron and Feme cannot join in Battery done to them both; and therefore Judgment ought to have been given against the Plaintiff on the Declaration, and not upon the Verdict, and so no Costs. But *per Curiam*, Because the Defendant was found not guilty, and what he did was as Officer, the Plaintiffs shall not take advantage of the Insufficiency of the Declaration or Writ to excuse themselves, *Cro. Jac. 17. Heydon's Case.*

Declaration.

Per quod consortium amisit.

Baron brought Action of Trespass for Beating him, *nec non* for beating his wife *per quod consortium, &c. amisit*. It was moved that the Plaintiff ought not to join the Battery done to the wife, in the Action with the Battery done to himself; and therefore he ought to have joined his wife with him in the Action. *per Curiam*, It is well brought; for the Action is brought in respect of the Harm done to the wife, but for the particular Loss of the Baron, for the Loss of the Company of the wife, which is a particular Loss to himself, as the Master for his Servant. And *Chilley's Case* was, Action was brought for the Beating his wife, *per quod negotia sua infecta remanserunt*, and had Judgment to recover, *Cro. Jac. 501. 60. and Larwin, 2 Rolls Rep. 51. Mesme Case.*

Declaration.

Trespass, that the Defendant made Assault on the Plaintiffs wife, and *illam verberavit & mala tractavit, nec non* the said *Eliz. cum* one Gown, one rickcoat, of the Goods of the Plaintiff, *simulcum* the said *Eliz. apud D. cepit abeurravit & detinuit*, and *per quod solamen & consortium, &c. amisit*. Verdict *pro Quer'* it was assigned for the

because the Action was brought by the Baron Sole for the Battery of the wife, which ought not to be; for the *tort* and Damage is properly done to the wife, and therefore the husband Sole shall not sue; and if the wife survive the husband, she shall have the Damage, and then the Damage being entirely given, the Judgment is erroneous. *Per Curiam*, The Action is not here brought for the Battery of the wife, but for the Loss of the husband for want of her Company and Aid, and all is concluded with the *per quod*, and which extends to all that went before, *Cro. Jac.* 538. *Hyde and Scissor*. The like Case, *per quod solamen, &c. Cro. Car.* 89. *Young and Pridd*. But *Yelv.* 89. is, that Baron Sole shall not have Action for Loss of Service by beating his wife, for Damages shall be given to the wife for *tort* offered to her Body. The Plaintiff declared for assaulting his wife, of which she died, is not good; this being a personal *Tort* to the wife, is now dead with the wife, and it is now become an Offence to the Crown, and drowns the particular Wrong, *Yelv.* 89. *Higgins and Butcher*. *Vid. 2 Inst.* 434.

Action for Battery, whereof she died.

Trespass of Assault, Battery and Imprisonment of the wife, until the husband paid 10 l. *ad damnum ipsorum*, it is well enough, 2 *Keb.* 188, 230. *Browne and Tripp*.

Battery brought by the husband for the beating of the wife *ad damnum ipsorum*, it is ill on general Verdict *pro Quer'*, and for the Battery of him she cannot join; but if the Jury had found the Battery or Damages several, it might be otherwise, 2 *Keb.* 269. *Jones and Aloff*.

So is *Dunoill and Mascal's Case*, 2 *Keb.* 813. In Trespass by Baron and Feme for beating the wife, and taking away from her an Apron, &c. and Verdict *pro Quer'* general. It was moved in Arrest of Judgment, that the wife cannot join as to the Goods, and Judgment was stayed *per Curiam*, Unless there had

Action for Battery of the Wife, and taking from her an Apron.

been several Pleas, and several Damages, 3 Keb 813.

Note, Where the Action and Damages do survive, the Conclusion shall be *ad damnum ipsorum*, as in Action for Battery of the wife; but in Action for beating the Baron and Feme, they cannot join nor conclude so, 2 Keb 434. *Atwood and Parnell's Case*.

Verdict.

Assault by Baron and Feme for beating Baron and Feme, they were found guilty of beating the wife only, and nothing was found concerning the Battery of the Baron. *Per Curiam*, If not guilty had been found as to the Baron, it had been well; but here is a *non Liqueat* as to him, 10 Co. 130. b. and it's a full Verdict, part of the Issue being only found, 1 Inst. 227. and here is no Discontinuance, the whole being continued, and *Venire de Novo* awarded, *Hardr. 166. Rochel's Case*.

Of Trespasses done to the Estate and Freehold of the Wife.

Quare clausum fregit.

Trespass by Baron and Feme, *quare clausum fregit*. *Per Curiam*, They may well join in this Action, if they shall join in a *Quare Impedit*; and so in Action of Trespass for cutting down of Trees; and in the principal case, it shall be taken by Intendment that they are Jointenants, 1 Bulst. 110. *Maynard and Towne*.

2 Vent. 195. Trespass *quare clausum fregit* by Baron and Feme: *Pollixfen C.* Justice was of opinion, that the wife ought to be joined with him that it was her Land; *Ventris contra*, The Action will survive, and they have Election to join or to bring it alone, 1 Brownl. 21. 1 Rolls Abr. 348. *Hob. 189.*

1 Cro. 96. 3 Cro. 306. *Trignel and Reeve, Bright and Addis Case.*

Trespas by Baron and Feme for entering upon the wife's Land, and *herbam ipsius Thomæ & Annæ adunc & ibid crescen' messuit & succedit & in faxum composuit, & 20 carucat' inde provenien' &c.* q. c. *Fregit & herbam ipsius T. & Ux. ejus messuit, &c.*
It was objected, that this Action doth not lie for Baron and Feme for the 20 Loads of Hay taken, for it is a Chattel severed from the Inheritance, and vested in the husband. *Per Curiam*, They may well join as they may join in Trespas, *de clauso fracto*, and cutting their Grass; so they may for carrying away the Hay coming of it, *aliter* if it had been for 20 Loads of Hay, and not said *inde provenien'* Cro. El. 196. *Cookson and Castle's Case*; the like Case is that of *Wilks and Peerson*, 1 Leon. 105. No. 140. Trespas by *Wilks* and his wife, and *Tbo. P. Quare clausum fregit herbam suam messuit & faxum suum sportavit ad damnum ipsius W. & Ux. & Tbo. P.* Exception was taken that it was not the Hay of the wife, nor was she damnified by it, but her husband. By *Wray* it's good enough; for though it be not good for the Hay, yet it is for the breaking the Close, & *herbam messuit* makes it good.

Trespas by Baron and Feme for breaking the Close of the wife *ad damnum ipsorum*, and after Verdict. *Ad damnum ipsorum.*
Per Cur' This Declaration is not good, nor aided by the Stat. Cro. Jac. 473. *Marshal & Ux. vers. Dorley.*

Trespas, *Quare clausum fregit & blada messuit*, brought by Baron and Feme, and Judgment given for them, but it was reversed, because Feme Covert may not have *Blees* in Common with her husband; and if it were that the *Blees* were common to them before the Coverture, they ought to be shewed, for the Count ought to have a general Intendment and not special.

P. 31. *El. B. R. Note*, The Difference between this Case and the Case of *Cookson supra*, *Quare herbam messuit*, & 20 *carectatas feni inde proveniunt* &c. because the Hay depends on the breaking of the Close, and all was but one Trespass, *Dyer* 305. 6. in marg. yet vide 2 *Rolls Rep.* 264.

Trover. Vide Supra Principio hujus Capituli.

Escape.

Baron and Feme brought Escape; the husband only arrests the Prisoner with a Latitat, and takes the Latitat in his own Name Sole; and now in the Declaration in Escape, he declares that he took out the Latitat *ea intentione*, to charge the Prisoner upon Bond made to the wife when she was Sole; and per Cur' it is good, 2 *Rolls Rep.* 312.

If Trespass be made to Baron, and Battery to the wife, the Action shall be brought *ad respond' A. quare clausum fregit & subboscum*, &c. ac in *E. Uxor' ipsius A. ibid. insultum fecit: Et ad respond' A. & E. de placito quare clausum ipsorum A. & E. fregit ac in ipsam E. insultum fecit*, &c. Et non *ad respond' A. quare clausum ipsius A. apud*, &c. *fregit. Et in ipsam E. apud R. insultum fecit, come fuerit* in Case de Midwych. Ex Manuscript. Mr. Browne.

Action on the Case.

Sur Assumpsit.

The Plaintiff in consideration, the Father of the Defendant, having Interest in certain Wood and Timber, would not cut them, but would permit them to come to the Defendant, his Heir apparent to the Land; he assumed to pay 100 l. to his Daughter, being the wife of the Plaintiff: Verdict *pro Quo*.

It is intended after Verdict, that the Father had good power to cut them down. *Per Curiam*, The Action is well maintainable by the Plaintiff, for the Benefit appertains to the Daughter, and he may refuse it, Sir Tho. Jones 102, 103. *Dutton and Ux. against Poole*, 1 Vent. 318. *Mesme Case*, vid. 331.

T.T. was indebted to *T. J.* in 20 l. *T. J.* made *E.* his wife Executrix; whereas *T. T.* was indebted to *E.* for Wares bought of her, and *T. T.* died, and made his wife Executrix, (now the wife of the Defendant) and *E.* took the Plaintiff to husband, and the Plaintiff required payment, and the Defendant in consideration he would forbear her, promised, &c. *Quære*, If the wife ought to have been joined in the Action; because the ground of the Action to the Plaintiff principally ariseth from the Plaintiffs wife, being Executrix to her husband, and for a Debt due *dum sola*: But by two Judges against one, it is good without her, for that is but part of the Consideration, and the Forbearance is his Act only, and therefore the Act only lies for him, *Cro. Jac.* 110. *Mynes and Lee*.

Whereas the Defendant received of the Plaintiffs Money by the hands of the Plaintiffs wife, &c. The Defendant in consideration thereof, promised unto them to pay it at such a day, and alledgeth the Breach for Non-payment. The Defendant pleads *Non assumpsit*, and found for him: It was moved in Arrest, that this Promise is void, being for Monies of the Baron and Feme's; and *ad damnum ipsorum* cannot be, for a Feme Covert cannot have Goods with her husband; and though it was objected, that it may be for Money due to the wife *dum sola*, or for Rent during the Coverture, it was held it shall not be so intended without it had been shewed, and adjudged for the Defendant, *Cro. Jac.* p. 644. *Abbot & sa Feme* vers. *Blofeld*.

Ad damnum ipsorum.

Indebitatus by the Baron alone for Money due to the wife of the Plaintiff, as Executrix; Judgment *per Curiam* was stayed, though the husband had power to discharge such a Debt. So had it been *sur computasset* with the wife, or any other Promise raised by the Law: But by *Windham*, were the Action on a Promise made to the husband in consideration of Forbearance, he alone might bring the Action, 1 *Kd* 106, *Tyrrel and Bennet, Sid.* 299.

If *Assumpsit* be made to a Feme Covert they ought to join, *Sid.* 25. *Shipston and Booler*, as *Assumpsit*. A Feme Covert, which was a Surgeon, in consideration of a Cure by her made, that the Action ought to be brought by the Baron, *Cro. Jac.* 205. *Welford and Buckingham*, 2 *Sid.* 128. in both the Names.

Promise to
Feme.

Election.

If *A.* speak with *B.* to sell Land to *B.* and after *B.* promiseth to *C.* the wife of *A.* in consideration he will not hinder the said *A.* her husband, to levy a Fine to him of the said Land to pay to her 10 *l.* and give her a Riding Suit, if the wife doth not hinder the husband, but he levies the Fine accordingly; the husband and wife may have Action on the Promise, for the Promise is laid in the Declaration to be made to the wife, for they may join at the Election of the Baron, 1 *Rolls Abr.* 32. *Faucet's Case*.

Promise to the
Feme.

If *A.* be in Execution at the Suit of *B.* and *C.* a Stranger comes to *B.*'s House in the absence of *B.* and assumes to the wife, that if *B.* her husband will discharge *A.* out of Execution, that he will pay the Debt at such a day if *A.* doth not pay it before; and after *B.* comes to his House, and his wife shews to him the said *Assumpsit* and agrees to it, and discharge *B.* out of Execution, *B.* shall have Action on this *Assumpsit*, 1 *Rolls Abr.* 31, 32. 27 *H. 8.* 24. *Tatam's Case, Godbolt* 361.

Promise

Promise made to the Baron and Feme during the Coverture, Action may be brought in the name of the Baron only, or else he may join her at Election, as I conceive.

C. and his wife brought Action on the Case against T. and declared that the Defendant in consideration the Plaintiff would marry A. that is now the Plaintiffs wife, did assume to make good a Legacy given by her Father's Will, and 40 l. more, at such a time; and that thereupon he did marry her. On an *Assumpsit*, and Verdict *pro Quer'*, it was moved in Arrest of Judgment that the wife was joined in the Action. And *Per Curiam*, here the Promise was made to the husband only, and he is only to have the benefit of the Promise; and though the Money is to be paid to both, yet it would be inconvenient to oblige the wife to it, for then the wife might have released it before Marriage; *Quer' nil capiat per billam*, *Stiles* 297, 313. *Cotterel* and his Wife against *Thobalds*. Whereas the wife of the Plaintiff in consideration the Defendant should marry her Daughter, had given to him 10 l. he promised to the wife that if he did not marry her Daughter, he would repay the 10 l. and avers he did not marry her; and Verdict *pro Quer'*. The Action was brought by Baron and Feme. And *Per Curiam*, It is well brought; for the Agreement of the husband maketh the Promise good *ab initio* to the husband, and it being made to wife, they may join in the Action, *Cra. El. 61. Prat.* and *Ux. vers. Taylor*, 1 *Keb.* 252.

If a Man promise to give an 100 l. to the wife of T. S. they ought (*per Cur'*) to join in Action for recovery of it, 1 *Bulst.* 21.

Action on the Case *per Tort*.

A Feme Sole had Right to Common for her life, and she marries; the husband was interrupted in taking the Common, and he brought Action in his own name and good, being only to recover Damages, 2 *Bulst.* 14. *Butler's Case*.

The' the Money he promised be paid to the Wife, yet Baron Sole shall have the Action.

So

So in *Quare Impedit*.

So in *Ejectione Firme*.

Prescription
for Common
in *jure Uxoris*.

John C. and *Joan* his wife brought Action on the Case against *G. M.* and declared, Whereas the said *John* and *Joan* were seised of a Mesuage and Land in *jure Joanne*, and that the said *John* and *Joan*, and all those whose Estates they have, &c. in *jure Joanne* time out of memory have Common in such a Waste, which is the Soil of the Defendant *pro omnibus averiis levant & couchant*, &c. and the Defendant had inclosed 20 Acres of the said Waste. *Per Curiam*, The Prescription is good, though it had been better if he had said all those whose Estate the wife hath; but this is Tantamount, for it goes merely to the State of the wife; and the better opinion is, that the wife could not join in this Action, as if she were seised in the Right of the wife, and he brings Trespasse for Trespasse done upon the Land, the wife may not join, for she shall not have Damages if she survive; but if Battery be to the wife, they both shall join, for the wife shall have the Action if she survive, and so was the Cook of *Grays-Inn's* Case; but the husband only loseth the benefit of the Common, and the wife shall not take this with her Land, if she shall have none during the Coverture, *Lat. 12. 285. Castrell* and *Sir Geo. Marr*.

But in *Baker's* Case, *Cro. Car. 418*. Action was brought by Baron and Feme, for that the wife before Marriage was possessor of a Lease for years of a Close, and had a Way from her Close over ——— to the Defendant to hinder her of her Way, erecting a Building *ex transverso via præd'* and that afterwards she married the Plaintiff *Baker*, and they in their Intermarriage could not use the said Way, to their Damage, &c. It was excepted, that the wife ought not to join with the husband for the trespass during the Coverture, *sed non allocatur*, for the Wrong was done to the wife, and the husband

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had it but in the Right of the wife, *Baker* vers. *Brereton*.

Baron and Feme join in Action on the Case for a Vexatious Suit in the Court of the Ordinary, being presented falsely and maliciously, that they made Hay on a Sunday. It was a Doubt if the Action lay by Baron and Feme, because their Vexation is several, at least the Feme cannot have Damages for the Vexation to her husband, & *adjornatur*, *Cro. Jac.* 355. *Ward* and *Ux.* vers. *Pease*.

Feme Lessee for years of a Mill, takes husband, the Suit to a Mill. Baron and Feme cannot join in an Action on the Case for the Suit, because it is only to recover Damages, and not the Term, *Hob.* 189.

One covenants to stand seised to the use of himself and his wife, for their Lives, and after to his Son, except the Timber Trees, saving that his wife shall have the Shrowds and Loppings. Husband dies; she marries the Plaintiff: The Son cut down 50 Oaks, whereby the Plaintiff lost the benefit of the Shrowds. *Verdict pro Quer.* This Action was brought by Baron and Feme, and good, though the husband might only have released the Damages; and if she survive, she shall have the Action, and the Damages also, *Cro. Car.* 437. *Trigmel* against *Reeve*.

Rescous.

The Baron distrains for Rent due to the Feme *dum sola fuit*; *Rescous* is made, Baron Sole shall have a Writ of *Rescous*, or at his pleasure, he may join the wife with him; yet for a Debt due to the wife *dum sola*, they ought to join, *Mare* 442. *Fenner* and *Plasket*.

Rent Charge granted to the wife, and to E.C. her first husband, E.C. died; she married the Plaintiff, and for Rent due *durante viduitate* of his wife, he distrained,

Baron and Feme: Or,

destrained, and upon *Rescous* he may bring *Rescous* in his own name, or join the wife with him in the action, *Cra. El. 459. Fenner's Case. Vid. Supra.*

Detinue.

Baron and Feme shall join in *Detinue* for *Chattel* concerning the Inheritance of the wife, (for the husband shall have them again when recovered,) *38 H. 8.*

Baron and Feme may join in a *Writ of Right* where the husband claims the Seigniorie in the land of the wife, *15 Ed. 4. 9. b.*

For Bailment *dum sola* Baron and Feme may join in *Detinue*, *1 Keb. 640.*

Forcible Entry.

In Action of *Forcible Entry* on the wife's land she was joined with her husband, *2 Vent. 195.*

Baron and Feme brought a *Writ of Conspiracy* will not lie, *March Rep. 47.*

Error. Vide Fine.

Where the Baron and Feme shall join or not, and in what Cases.

If Action be brought against *A.* as a Feme sole where she is a Feme Covert, and she pleads to him as a Feme sole, and after a Judgment is given against her, and she is taken in Execution, she and her husband may bring a *Writ of Error* for this, otherwise the husband would be prejudiced in his Conscience of his wife, and of her care about his Family; and hath no other means to aid himself. But in the case

Fine the Baron may enter and avoid it, *M. 15. Car. 1. B. R. Edwards and Simpson on Judgment in the Marshalsea, Tr. 1651. Haywards Case.* So in the same Case if the Action be brought against *A.* and others, they all with the husband may join on the Writ of Error, *1 Rolls Abr. 748.* and the Judgment shall be reversed for all, because it is entire. They may assign for Error the Coverture of the wife, *1 Rolls Abr. 776.* and the Difference is, in *Stiles Rep. 280.* a Stranger to a Record may not bring a Writ of Error to reverse it, as in the principal Case the Baron was, but that is only where he may have another remedy to avoid the Prejudice; which in this case he hath not.

Coverture of
of the Wife
assigned for
Error.

If the husband seised in the Right of his wife make Ejectment. an Ejectment Lease, and the Lessee bring Action upon it, and had a Verdict and Judgment, it is no Error to alledge the Death of the woman before Judgment; by which the Interest of the husband, and the Lease made by him determines, because the wife nor husband are Parties to the Action, and this depends upon the Title to the Land, for the Plaintiff may say that the Baron was seised in his own Right, *Hob. Viles and Jordan, 1 Rolls Abr. 768.*

If the wife be received by default of the husband, and lose the Land by Judgment, the Baron and Feme shall have a Writ of Error, *4 Ed. 3. 21. b.*

If Baron and Feme levy a Fine, they may by Error reverse the Fine for Nonage of the wife, during the life of the husband, *2 Co. Beckwith's Case, 11. b. Worsley's Case.*

H. and his wife brought Error to reverse Judgment and Outlawry against them in Debt, and because it was to reverse Outlawry, they could not assign Error but in Person; and because the husband could not bring in his wife, it was held that he could not assign Error, for he cannot assign it without his wife,

Husband cannot assign Error without his Wife to reverse Outlawry against them.

wife, and so is the Course of the Court, *Cra. El. 6*
Wade and his wife against *Smith*.

Regula.

VVhere Baron and Feme sue in an Action they
 sue by Attorney, for the husband makes Attorney
 them both, 2 *Sanders* 213. This is to be understood
 where the wife is of full age.

*Actions brought by a Feme Covert without
 Husband. Of a Feme Sole Merchant.*

In two Cases a Feme Covert hath been in our
 ancient Books held to be able to sue without naming
 her husband.

1. In Case of Exilement:
2. In Case of Abjuration.

As to Exilement it was the Case of *Sir Ralph
 Belknap's* wife: Her husband being banished beyond
 Sea in the time of *H. 4.* she sued a Writ of *Dowry*
 in her own name without her husband, he being
 alive, and recovered it: Which occasioned one to make
 this Reflection.

*Ecce modo mirum quod femina fert breve Regis,
 Non nominando virum conjunctum robore Legum.*

And yet it was no such wonder; for King *Edw.*
 long before brought a *Quare Impedit* against the Lady
Maltraverse, and she pleaded she was Covert of her hu-
 ron; whereto it was replied for the King, That her
 husband the Lord *Maltraverse* was exiled for a
 tain Cause, and she was ruled to answer.

So in the Case of Abjuration: It was *Weyland's*
 Case in the time of *Edw. 1.* It was held that after
 Abjuration of her husband she should have her

ture, and an Action was brought by her alone for a personal Wrong done to the Estate conveyed to her, *1 Inst. 132. A. 133. A. 3 Bulst. 188.* because this Exile and Abjuration is a civil Death: But In Relegation or Exilement for a time *aliter*.

In some other Cases a Feme Covert may sue without her husband.

Feme Covert by the Custom of *London* shall sue without her husband as a Sole Merchant, by *Wray*; but the Action must be laid within the City, in *Chamberlain* and *Sharp's Case*, *1 Leon. 131.*

But every Feme which trades in *London* is not a Feme Sole Merchant.

On *Habeas Corpus* to remove the Body *cum causa* of the wife of *B.* it was returned, That the Action was brought against her and her husband, in Lands as a Feme Sole Merchant, for Wares bought by the Feme, wherein the husband was only named for Conformity; and by the Custom the Execution shall be only against her, *Cro. Jac. Langham* vers. *the wife of Bluet.*

The Case in *Littleton's Reports* was; *Bluet* was a Vintner, and prest for a Soldier beyond Sea, and goes over Sea; the wife takes an House, and buys Wine of *Langham*, who trusts her, supposing her to be a Feme Sole Merchant: After the husband returns, and the wife denies to pay for the Wine, and the Doubt was if the wife were a Feme Sole Merchant by the Custom, and the Words of the Custom were read, That where a Woman exerciseth a Trade, wherein her husband doth not intermeddle, she shall have all Advantages, and shall be sued as a Feme Sole Merchant by the Custom: And by *Richardson* and *Telverton*, she is not a Feme Sole Merchant within the Custom, for her husband exercised the same Trade; and by *Telverton* Feme Sole Merchant ought to be the Widow of a Tradesman, who takes a second husband, and she after exerciseth the Trade of her first husband.

husband. But *Croke, Hutton* and *Harvey contra.* If the husband meddle with the Trade of the wife, then she is not a Feme Sole Merchant; but if the husband be beyond Sea, or becomes Bankrupt, or leaves his Trade, and the wife exercise the same Trade, or they both exercise the same Trade distinctly by themselves, and not meddle the one with the other, the wife is Sole Merchant, *Lit. Rep.* 31. *Mafme* Case; but not in 1 *Croke* 67. the same Case.

The Custom of a Feme Sole Merchant was alledged, and a *Procedendo* was awarded.

Feme was indicted as a Feme Sole Merchant, for selling Ale, and her husband not joined; where she useth the same Trade, she doth it as a Servant, and she alone shall be indicted: Nor will any Action lie here (in *B. R.*) against her alone, and a *Procedendo* was awarded, 2 *Keb.* 583. *Moreton* and *Packman*: So a *Procedendo* was awarded in *Roysson* and *Ivory's* Case on Suit of a Feme Covert as Sole Merchant, the Custom being alledged in the Declaration, 3 *Keb.* 302.

Wife may sue as a Feme Sole in the Spiritual Court.

If Baron and Feme are divorced *causa Adulterii*, and after the wife sues Sole without the husband for Defamation; although the Divorce does not dissolve the Marriage, yet because the wife may sue as a Feme Sole, in such Case by the Course of the Spiritual Court, no Prohibition shall be granted though it be against the Usage of our Law, 2 *Rolls Abr.* 298. and fol. 300, 301.

There is a Case in 1 *Bulst.* 140. which I think is misreported: If a Feme Covert in the absence of her husband, he being beyond Sea, doth bring Trespass of Assault and Battery made upon her, in her own name, and in the name of her absent husband, this is well brought, and she may bring such Action in her own name without her husband, *quod caret*; but she cannot be sued by another without her husband, tho' he be then beyond Sea, such a Suit cannot be maintained before the return of her husband.

If I make a Lease to Baron and Feme, and they Co-
 venant to do no Waste, or to repair Houses, and the
 husband dies, and the wife survives, and holdeth it;
 if the wife commit Waste, or do not repair the House,
 no Action lies against her; but in such Case the wife is
 tied to pay Rent, or to perform a Condition made on
 the part of the Lessor, but not to observe or perform
 the Covenant of the Lessee, 1 *Brownl.* 31.

If a Suit be in the Spiritual Court against a Woman
 for exercising the Trade of a Midwife without Licence
 of the Ordinary against the Canons, a Prohibition
 lies; for this is not any Spiritual Function, of which
 they have Conusance, 2 *Rolls Abr.* 286. *Benskin* and
Crips.

Baron and
 Feme Cove-
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 Baron dies, no
 Action lies a-
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Suit against a
 Woman for
 exercising the
 Trade of a
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C H A P. XXVII.

Special Actions brought by a Woman. Cui in Vita. Appeal. The Nature of an Appeal. The Pleading Pleadings and Trial in an Appeal. Quare Impedit. Actions on the Case for Scandalous Words by Baron and Feme against Baron and Feme, with Declarations and Pleadings therein, and where Baron and Feme must join or be joined in the Action.

Cui in Vita.

IS a proper Action or Remedy to be brought by the wife upon the husband's aliening her Land by Feoffment, &c. the wife at Common Law might not enter, but is put to her Action, which is called *Cui in vita*; and upon this Discontinuance her Husband might have a *Sur cui in vita*; but if the wife were Tenant in Tail, and her husband alien in Fee, and dies, and the wife dies, the Issue in Tail cannot have a *Sur cui in vita*, but he must have his *Formedon* in Descender by Stat. *W. 2. c. 1.* but this is remedied by the Stat. *32 H. 8.* and the wife may enter.

If the Baron and Feme lose by default, and the Baron die, the wife shall not have a *Quod ei defuit*, for a *Cui in vita* in that Case is given to her by the Stat. *W. 2. c. 3.*

So on Recovery in Action of Waste against the Baron and Feme by default, the wife shall have a *Cui in vita*, 1 *Inst.* 355.

In a *Sur cui in vita* of a Mesuage, the Parties being at Issue, it was found by Verdict, that a Discontinuance being of a Mesuage, the Discontinuee pulled it down, and erected a new House part on the Land discontinued, and part on his own Land adjoining,

and the Writ was brought for the entire Mesuage, and well; and there needed no Foreprise. And the Demandant recovered, but Judgment was entered specially, that the Demandant should recover *Mesuage*, viz. so much in length, and so much in breadth, as the Verdict found, *Cræ. El. 234. Hayes and Allen.*

But by the Stat. 32 H. 8. c. 28. in such Case of Discontinuance the wife and her Heirs, after the death of the husband, may enter into the said Lands and Tenements so aliened, and are not driven to this Action, *1 Inst. 326. a. 2 Inst. 456.*

Appeal.

Femina de morte viri sui inter brachia interfecti non aliter poterit appellare, saith *Fleta*. Where *inter brachia* is understood the wife, which the husband had lawfully in possession at his death; for she must be his wife *de facto* and *de jure*, for in Appeal *n'ung, accouple en Loyal Matrimony*, is a good Plea, *1 Inst. 69.*

The wife in possession without lawful Matrimony shall not have Appeal, she must be wife *de jure* as well as *de facto*, without Elopement or Divorce, *1 Inst. 317.* and the Plea *n'ung, accouple* shall be taken strictly: But a wife *de facto* shall have Dower though not an Appeal, and in other Cases she shall have Appeal where she cannot have a Writ of Dower: as if she elope she is barred of her Dower, but not of her Appeal, because the Stat. *14. 2. c. 34.* bars her of her Dower, but not of her Appeal. If the husband be attainted of Treason, the wife shall not be endowed; if any kill him, she shall have Appeal, *1 Inst. 33. b.* A Woman at this day may have an Appeal of Rape, Rape and Mayhem, for she is not restrained thereof, *2 Inst. 68, 69.*

None but a Wife *de jure* shall have an Appeal.
A Wife *de facto* shall have Dower.

Before the Stat. *Mag. Char. cap. 34.* a Woman as well as a Man might have had an Appeal of the death of any of her Ancestors, but now she is disabled to bring Appeal of the death of any but her husband; but the Son of a Woman shall at this day have Appeal if he be Heir at the death of the Ancestor.

No Appeal lies for a Woman as Heir.

Appeal annexed to the Widowhood.

The Right of Appeal of the death of her husband is annexed to her Widowhood, therefore if the wife of the dead Person marry again, her Appeal is gone, though the second husband die within the year. And if she brings her Appeal in her Widowhood, and takes husband, the Appeal abates for ever. So if in Appeal she hath Judgment of death against the Defendant, if after she take husband, she can never have Execution of death against him.

Albeit, the husband be attainted of High Treason or Felony, yet if he be slain, his wife shall have an Appeal; for notwithstanding the Attainder, he was *vir suus*, but the Heir cannot have an Appeal, for the Blood is corrupted between them, 2 *Inst.* 68, 69.

It must be within the year and day. Process.

After the year and day the Appeal of death cannot be commenced; the year and day is to be accounted from the death.

The Plaintiff pursues an Appeal for the Murder of her husband; upon the return of the Writ it was moved that the Plaintiff might prosecute by Attorney, for which a Warrant was produced under the Hand and Seal of the Plaintiff; which being avowed by her in person, she was admitted so, and the Warrant sealed, and after the Appeal was arraigned in the French Language; and after the Prisoner being at the Bar, was arraigned by *Lindsey* Secondary, and pleads not guilty: Upon this he was delivered by Mainprise of a Lord and two Esquires, to appear *de die in diem*, Sir *Tbo. Jones* 210. *Warren and Verden*.

The Law of Husbands and Wives.

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By the Stat. of *Gloc' cap. 9.* the Count of the Ap- Count in Ap-
ellant must comprehend Seven things: 1. The Fact. peal.

2. The Year. 3. The Day. 4. The Hour. 5. The
Year of the King. 6. The Town where the Fact was
done. 7. With what Weapon (if any Weapon were)
of which you may fully read in 2 *Inst.* 317, 318,
319.

Pleadings, or Bars in Appeal.

In Appeal of Murder by a Feme. The Defendant
pleads *nient accouple en Loyal Matrimony, Et si, &c.*
not guilty to the Felony. The Plaintiff replies, She
was *accouple en Loyal Matrimony*, nor does not an-
swer nor plead that he was guilty of the Felony.
Quere, If it be a Discontinuance, *Et per Curiam.*

When a Plea is pleaded which is triable at Com-
mon Law, and concludes over to the Felony, there
the Plaintiff ought to reply, and conclude over to the
Felony; but when he pleads a Plea triable otherwise
than by the Common Law, it is otherwise, *Cra. El.*
123. *Withington and Delabar.*

Reg.

A. was indicted for the Murder of *W.* and being
assigned upon it; that *A.* the wife of *W.* brought
Appeal against him for this Murder, and that he was
assigned upon it, and pleaded not guilty, and found
by Jury that he was not guilty of Murder, but Man-
slaughter; and that thereupon he prayed his Clergy,
and had it, and demands Judgment if he shall be put
upon to answer this Felony, and it was adjudged a
good Plea. *Quere*, For the finding him guilty of
Manslaughter in the Appeal, is more than needs, and
the Allowance of Clergy is to no purpose, *Cra.*
1256. *Barley's Case.*

In Appeal brought by *E. B.* of the death of her
husband against *R. B.* who came in upon the Exi-
tent. The Defendant appears, and demands *Oyer* of
the Writ, and of all the mean Processes which were
entred

Pleading of
Conviction
with Clergy
allowed.

entered upon Record. Then the Plaintiff having declared in her Appeal, the Defendant pleads that at the general Gaol-delivery at York before Commissioners assigned, he was indicted of the Felony comprised in the Appeal, and arraigned and found guilty of Manslaughter, and had his Clergy, *prout patet per record*: And further saith, that *nullum judicium* was given upon the Premises, and took all the material Avenues, &c. *Et quoad murdrum & feloniam prædictam* he saith he is not guilty, and Plaintiff demurs; it was agreed *per Curiam*, 1. No Appearance by the Defendant in Appeal shall aid any Discontinuance of Suit, but Error in the mean Process is saved by an Appearance after, as in 9 H. 6. 2. in Appeal the Exigent *cepi corpus*, where it should be *exigi feci*. The Defendant appeared, and was acquitted, and payed his Damage; he shall have his Damage, because the foundation of the Suit, (*viz.*) the Writ of Appeal, and all the Process which issued at the Suit of the Party, is good and right. 2. The Plea was good; 1. Because *ex necessitate juris*; The Defendant need not plead *omnino* to the Country, where he had pleaded a good special Plea before; and here the pleading of the Connection with the Clergy allowed, is a good Plea in Bar of this Appeal, and so was *Wroth and Wigg's Case*, 33 El. and 4 Co. 45, 46. *Burgh and Holcroft*; and then the Pleading further to the Felony is negative: And the word (*Murdrum*) can be taken for no other than Manslaughter, and he does not say *malitia præcogitata*, *Tele. p. 104. 9 Jac. Bradley and Banks.*

Release of Action criminal or mortal, or Pleas of the Crown, is a good Bar in Appeal, 1 Inst. 289. b.

Trial.

Appeal for the death of her husband. Upon several issues pleaded, the Plaintiff was non-suited upon a Trial against the one. *Per Curiam*, It is a Non-suit against all; and therefore as to the Suit of the Party, it was ruled that he should be discharged; but that the others who were not tried, should be arraigned at the Queen's Suit, *Cro. El. 460. Curtis vers. Savill* and three others.

It is against a Rule in Law that a Trial for Murder by Appeal or otherwise, should be out of the County where it was committed; Appeals were never allowed in Counties adjoining for Murder done in Wales, *Cro. Car. 247. Fentley and Price*.

In Appeal by a Feme Covert of the death of her husband, if the Defendant saith that the husband is alive in another County, this shall be tried by Proofs, *2 Ass. 26*. so if he saith he is alive generally, without saying in another County.

If the Appellee be acquitted, he shall recover Damages by Stat. *W. 2. c. 12*. yet every Appellee upon being acquitted, shall not recover Damages. As if a Feme Covert be appealed alone without her husband and acquitted, because of her Disability; but if Appeal be brought against husband and wife, and they be acquitted, Damages shall be recovered by the husband alone, and shall be given to the husband and wife, for the Damage of the wife, *2 Inst. 385, 386*.

Appellee acquitted shall recover Damages.

If a Feme Covert be acquitted upon Appeal, she shall have Damages against the Abettor, *2 Hob. 98*.

Quare Impedit.

If the husband be disturbed to present to an Adulteress which he had in the right of the wife, and dies,

dies, the wife shall have a *Quare Impedit* of this Disturbance, 3 H. 5. Q. Imped. 21.

Husband seised of an Advowson in the right of his wife, presents, and after hath Issue, and the wife dies, and after the Church is void, the husband shall not have *Assise of Darrein Presentment*, because he is in of another Estate than he presented to before; for before he was seised in the right of his wife, and now he hath an Estate for life, *Reb. 118. b.* but if the husband after Issue had presented, and after the wife dies, and the Church is void, the husband shall have this Writ of *Darrein Presentment*, because he had Inception to an Estate for life by the Courtesy by the first Presentment, which is now compleat.

If two Copartners be, and they cannot agree to present, the eldest shall present; and if her Sister disturbs her, she shall have a *Quare Impedit* against her. So Tenant *per* Courtesy of the eldest shall present.

A. and B. his wife present to a Church to which they have no right, this gains nothing to the wife; for the wife is at the will of the husband, and Presentation is but Commendation, or the Act of the husband, and it is not like to an entry into Lands by them; *alio* it is when the wife has right, *Marsh p. 90.*

*Actions on the Case for Scandalous Words spoken by
Baron and Feme against Baron and Feme.*

Thou art a Witch, no Action lies. Action lies not for calling one Witch, without alledging she hath done some Act, *Cro. Car. 478, 480. 1 Roll Abr. 45.*

Thou art a Witch, and I will prove thee a Witch; Action lies, *Cro. Jac. 150. Edwards and Dufley.*

Thou art a Witch, is not actionable; and the Addition of these words, *I have seen thy Imps and Spirits* is

in the night, is but matter of fancy, and not triable if
1202, Cro. Jac. 399. Lloyd and Coke, 1 Rolls Abr.
44. contra.

Thou art a Witch, and wert the Death of such a
Man's Child, at whose Birth thou wert Midwife;
 it is actionable by the Stat. *1 Jac.* a Witch is punish-
 able, *Godb. 341. 2 Rolls Rep. 343.*

She sacrificed one of her Children to the Devil to
be intent to bewitch his Mother; Action on the Case
 for these words, for she is punishable by the Stat. of
Witches, 1 Rolls Abr. 44. Lock and Lock.

Thou art a Sorcerer and Incanter; no Action
 lies; for this is but a sort of Cozenage, *1 Rolls*
Abr. 45.

He has bewitched my Weare, and I can take no
sleep; no Action lies.

She is a Witch, and a very strong Witch; no
 Action lies, *Cro. Car. 282, 324. 1 Rolls Abr. 45.*

Thou art a Witch, for thou didst bewitch my Wife's
Milk; and Action lies, *Cro. Car. 141.*
1 Rolls Abr. 45.

But there are many more Cases of the like nature
 in our Books, which because they properly belong to
 another Title, I shall not further take notice of, but
 come to such Cases which more immediately concern
 this Subject.

Action was brought in *London* for calling a Woman
 Whore; the Defendant removed the Cause into *H.R.*
 and the Court granted a *Procedendo* to try it in
London, for by *Rolls* we cannot determine the Custom,
1205 Rep. 244.

The Defendant's wife spake of the Plaintiff's wife
 these words, *Thou art a Theivish Quean, and hast*
stolen my Faggots, innuendo, *five Faggots of the De-*
fendant's and his Wife's: It was moved that the
 words are not actionable; for a *Ferne Covert* hath
 not any Goods that can be stolen. But *per Curiam*,
 The

The Action lies, she chargeth her with Felony, and it is no matter whose Goods they are, *Cro. Jac. 600. Stamp and Ux. vers. White and Ux.*

Thou hast stol-
len my Goods,
innuendo the
Goods of a
Feme Covert.

If a Feme Covert saith to another, *Thou hast stolen my Goods*; the other asked, *What Goods*; the wife answered, *My Plew and Stuff*: And in the Declaration the Plaintiff averred *innuendo*, the Plew and Stuff of the husband: No Action lies, for a Feme Covert cannot have Goods, 1 *Rolls Abr.* 74.

Thou hast sought the Blood of my Husband, and wast his Death; for hadst thou been an honest Woman he had been alive still; and avers in Facts that her husband was killed: The words are actionable, *Cro. El.* 293. *Gastrell and Townsend.*

Toose his wife, innuendo the Plaintiff, *Hath killed thy Husband*; innuendo *J. D.* her husband lately dead: The words were adjudged actionable, *Cro. Jac.* 306. *Toose's Case.*

If a Man saith, *A Woman told me Megs his Wife had poisoned Griffin her first Husband in a Misk of Milk*: *Meg* and his wife may have Action of Slander for this, for otherwise a Man may raise a Slander of his own head, and not be punished, 1 *Rolls Abr.* 64. *Meg and Griffin.*

One said of a Woman, *Thou didst poison thy husband, and I will justify it to thy face*: Action lies, though it's not said she did it voluntarily; but it's intended by common Acceptance, but it must be averred that he was dead before the words spoken, 1 *Rolls Abr.* 71. *Gardner and Spurdance.*

If the Plaintiff declare that the Defendant spake these words of her, *Thou art a Villanous Quen, and a Murdrous Quen, for thou didst murder my Wife*; and the Jury find she spake the words of the Defendant in the third person, *She is a Villanous Quen, &c.* This is a material Variance, and cannot be intended the same words, 2 *Rolls Abr.* 716. *Blisset's Case.*

Mrs. P. wrote a Letter to one to poison her husband; Action lies for these words, cited in *Dean and Em's Case*, 1 Bulst. 201.

Wallis's Wife is thy Whore; no Action lies at Common Law, but in Spiritual Court: But to say, *One keeps a Bawdy House*, is actionable at Common Law, *Sid. 61. Wallis's Case*.

Thou art an Whore, and I will throw thee out of thy Living, (viz. Copyhold) and she was posselt of a Copyhold *dum sola & casta*; it is actionable, *Sid. 114. Boy's Case*.

She is an Whore, and her Children, (innuendo which she had by her former husband) *are F's bastards*; the words are actionable, though the Children cannot be Bastards in Law, but in Reputation they may, and it's loss of Marriage, *Cro. Car. 322. Ryan and Cockman*.

She was with Child, and miscarried at C. N. his House: Words spoken of a Virgin; *per quod* she had Suiters, and was threatned by her Father to be turned out of his House; but no particular Damage shewed: Not actionable, *Sid. 398. Barnes and Madlin*.

Thou art an Whore-master, for thou hast lain with Houde's Wife, and wadst to do with her against a Chair; *per quod, &c.* Judgment *pro Quer'*, *Cro. Jac. 323. Matthews and Craple*.

Action on the Case for saying, *He had two Bastards, and should have kept them*. By which Discord rose between him and his wife, and they were likely to be divorced; not actionable, for it is but an Imagination of being divorced, *Cro. Jac. 473. Barnard's Case*.

He hath three Wives: Actionable and within the Statute.

What do you mean to entertain him, for he was a very bawdy Man to his former Wife, and would not show her Necessaries, and is of a small Estate:
Per

Baron and Feme : Or,

Per quod, the wife refused him, and the words adjudged actionable, *Shepherd's Case* cited, *List. Rep.* 193.

Of a Woman who was in Communication of Marriage, *She is a Burstenbellied Queen*, and her Garters hang down to her Garters; adjudged actionable, *Harvey's Case* cited in *Bridge and Langton's Case*, *List. Rep.* 193.

Where Baron and Feme must join in the Action or not, and how Judgment shall be.

Where Wife is found guilty only, yet the Judgment was against Baron and Feme.

Action on the Case was brought against H. and his wife, for words spoken of the Plaintiff by the Defendant's wife: Upon not guilty, Verdict was for the Plaintiff, and Judgment given, and a Writ of Error brought: And this Exception was taken, That the Verdict found the wife only guilty, and yet the Judgment was given against Baron and Feme. *Per Glanvill* Ch. Justice, the Jury have found the wife guilty, and so the Declaration is true, and therefore just cause of Action, and the Judgment well given, *Stiles* p. 460. *Abbot and Vaughan*.

C's wife is a Bawd and keeps a Bawdy House: They join in the Action, and conclude *ad damnum ipsorum*, and good, *Chambers* and his wife *vers. Risley*, *March* p. 212.

Declaration.

In Action against Baron and Feme if the Plaintiff declare, that they *dixerunt* of the Plaintiff certain scandalous words, such a day and year: If the Defendants plead not guilty, and the Jury find the husband guilty and the wife not guilty, in this Case the Plaintiff shall have Judgment, for although the words by the Baron and Feme may not be jointly spoke in as much as they have two Mouths, and the speaking of the one is not the speaking of the other, so that it shall be taken that the words were severally spoken

at the same time; in which Case the Action ought not to be brought against both, in as much as if they had been both found guilty, there ought to have been two Judgments, one against Baron and Feme, and the other against the Baron only, which is not to be suffered upon one Writ; and therefore if the Plaintiff had demurred upon this Declaration, it had not been good; yet when the wife is found not guilty, there need not be but one Judgment, (*viz.*) against the Baron; and for this the Verdict had made it good, and so the Plaintiff shall have Judgment against the Baron, 1 *Rolls Abr.* 782 so is *Stiles* p. 349. *Butcher and Orchard.*

H. 32 El. B. C. Fishume's Case. Baron and Feme and their Son, brought Action on the Case for saying, *That they had committed Treason for coining of Money*; and adjudg'd, no Action lies. Action on the Case for slanderous words spoken by Baron and Feme lies not, for they cannot speak together, *Dyer* 19. *Margine.*

Action for words spoken against Baron and Feme in words laid to be spoken by the wife: Upon not guilty pleaded, a Verdict was found for the Plaintiff. *Quod ipsi non sunt inde culpabiles*, and good, and it is no Error, 3 *Bulst.* 62. *Quelsh and Ux. versus Carpenter.* *Quod ipsi non sunt culpabiles.*

In Action on the Case against Baron and Feme in words spoken by the wife: The Baron is to be found not guilty, because nothing is laid to his charge; and if they are both found guilty as to the husband, the Verdict is void, but good as to the wife alone, 1 *Bulst.* 60. Verdict.

The Defendant's wife spoke of the Plaintiff's wife scandalous words, and he brought his Action against Baron and Feme, and they pleaded *quod ipsi non sunt culpabiles*, and good, for the Baron and Feme are charged as for the wrong of the wife, *Gre. Car.* 417. *Sandler and Simmel.*

Action

*Ad damnum
ipforum.*

Action on the Case by a Victualler for saying of his wife, *She was a Bawd of Bawds, and a Bawd to her own Daughter*; and special Damage, *Quod ad damnum ipforum*, 1 Cro. 419. The special Damage is only the husband's, and the Action would not lie without the special Damage, and Judgment was stayed, they ought not to have joined; had the Damage been laid *per quod*, he lost *Consortium* of the wife, they could not join, *French and Lever* in B.C. 1 Keb. 791. *Colman* and *Ux.* vers. *Haroll*.

Error on a Judgment in C. B. was, That the Baron and Feme should recover, and it was assigned *per Error* in B. R. because the Baron only is to have the Damages; and yet Judgment was affirmed by the whole Court, *Godb.* 369. pl. 459. *Litchfield* and his wife vers. *Mellbouse*.

So Case by Baron and Feme of words spoken of the Plaintiffs wife *ad damnum ipforum*, and Judgment was stayed after Verdict *pro Quer.*, 2 Keb. 387.

In mis.

When Judgment is given against Baron and Feme for words spoken by the Feme, both must be *in mis.* *Hob.* 127.

Release.

Suit for Defamation.

If A. a Feme Covert, speak scandalous words of B. another Feme Covert; and after the husband of B. makes a Release of this to the husband of A. and after A. sues B. in *Court Christian* for this Defamation, and there the Release of the husband of B. is pleaded; and notwithstanding Sentence is given there for A. and Costs taxed, and upon this an Appeal; yet no Prohibition lies as to this matter, because there they have Jurisdiction of the Cause, and also of the manner of Proceeding: But a Prohibition lies as to the Costs, for the Costs shall go to her husband, who had made the Release, 2 *Rolls Abr.* 301. *Perry* and *Hubbard*.

Where the Wife may sue Sole.

The wife sues in *Court Christian* for a Defamation, (as she may sue Sole there) and the husband and the other refer themselves to the Award of J. S. who makes an Award; and this is pleaded in *Court Christi-*

and not allowed; yet a Prohibition was denied, because this Suit is only to restore her to her Fame, which the husband cannot hinder, 2 *Rolls Abr.* 301. *Pannell and Watford*; and so is *Motam's Case* there, where the wife after Divorce *causa Adulterii a Men- sa & thoro*, sues for Defamation.

Action for words against Baron and Feme. Defendant pleads *quod ipsi non sunt culpabiles*, and found *Quod ipsi non sunt culpabiles*. Moved in Arrest of Judgment, because the issue was not well joined; for being for words spoken by the wife, it ought to be *quod ipsa non est culpabilis, sed non allocatur*; for the Baron and Feme charged as for the Wrong of the wife, *Cra. Car.* 47. *Needler* against *Symel* and his wife.

CHAP.

C H A P. XVIII.

Actions against Baron and Feme. Trover, Debt, Trespass, Actions on the Case, Waste, Covenant, Account, Audita Querela, with the manner of Declaring and Pleading in each Action. Actions against Baron and Feme by reason of Offences against a Statute. Information against Baron and Feme for the Recusancy of the Wife by the Stat. 1 Eliz. & 23 Eliz. In what Actions the Husband shall be charged after the Death of the Wife. Where the default of the Wife shall be the default of the husband, and e contra. Where the wife shall be received upon the Husband's default. Ways of Law by Baron and Feme. In what Cases the Husband shall appear, and be compelled to put in Bail for his Wife or not. Of Baron and Feme being sued to the Outlawry, and how the Entry shall be.

Trover.

Trover by the Feme, and conversion against Baron and Feme.

Whether the Wife may be said to convert Goods.

TROVER by the Feme, and Conversion by the Baron and Feme. The Action must be brought against them both, 1 Leon. p. 312. and not against the Baron only, for the Action doth sound in Trospass; and it is not like to Detinue, for upon Detainer by the wife, the Action lies against the Baron only, *Marsh's Case*.

Whether and how the wife may be said to convert Goods, hath been a Question in our Books. Mich. 7 Jac. Trover was brought against Baron and Feme, and Plaintiff declares he was possessor of divers Goods in Specie until such a day, and lost them, which came to the Possession of both the Defendants, and they converted them *ad damnum*, &c. And upon not

guilty

guilty pleaded, found *pro Quer*. Exception was taken to the Declaration, because the Conversion is laid to the Charge of the wife as well as to the Charge of the husband; and Feme Covert may not convert Goods, but it shall be said the Conversion only of the husband, for as much as she cannot have Property, but all is in the husband. To which it was answered by *Talbot*, That this Action is not grounded in any Property supposed to be in the Defendants, but upon the Possession only; and the Point of the Action is the Conversion, which is a Tort with which a Feme Covert may well be charged as well as she may be charged with a Trespass, or a Disseisin committed. And if a Feme Covert take my Sheep and eat them, or other Goods, and convert them, I shall well have the Action against Baron and Feme; and suppose the Conversion in the wife only, (*viz.*) the Tort. But Baron and Feme may not have Action on Trover, and suppose the Possession in them both, for the Law renders all in Point of Ownership to the husband, and *suit concessum, per Curiam*. But this seems not to be Law; for in *Berry and Neve's Case*, 20 *Jac.* 1: 20 *Jac.* 661: an Action lies not against Baron and Feme for converting Goods to their uses, for it is the Conversion of the husband only, and they are only to the use; and although they may be charged with a Battery or Imprisonment, yet it cannot be so for Goods converted; and the Judgment shall not be reversed *quoad* the wife.

And yet in *Rbenes and Humfries's Case*, *Cro. Car.* 44 Trover was brought against Baron and Feme for Conversion by Baron and Feme *ad usum ipsorum* Conversion *ad usum ipsorum*. and not guilty: Both are found guilty, and Damages assessed. It was moved in Arrest of Judgment, That the Action lies not against Baron and Feme jointly for Conversion to their uses during the Coverture; for when they join it is the Act of the husband only, and the Feme cannot convert to her own use: But Action

of Trover well lies for Conversion by the Feme before Coverture, or by the Feme only during the Coverture, for she may do a Tort solely, and the husband shall be joined with her, but not where she joins with her husband; and Judgment was given for the Defendant, *Cro. Car.* 254.

Trover was brought against Baron and Feme, and that they converted them *ad usum ipsorum*, and for that cause Judgment was reversed; for a Feme Covert cannot convert to the use of the Feme, but all is done to the use of the husband, *Cro. Car.* 494. *Ferry* and *Diggs*, though it was alledged in such case, *1 Vent.* 33. when it was *ad usum proprium converterunt*, that *proprium* might be applied to the use of the husband only, and so if it had been *ad usum suum*: But *per Curiam*, Neither had been good; so was *Gallop's Case*, *Stiles* 136. And it was prayed that Judgment might be entered, *quod querens nil capiat per billam*; for if it be *quod def' eat inde sine dñe*, the Plaintiff could not have brought *Action de noven*.

*Quod ipsi non
sunt culpabiles.*

Trover was brought against Baron and Feme supposing the Trover to be by both, and the Conversion by the Feme only. The Defendants plead *quod ipsi non sunt inde culpabiles*: After Verdict *pro Reo* Judgment was stayed in as much as the Declaration doth not charge the husband with any Tort, but only the wife, the issue ought to have been *quod ipsi non est inde culpabilis*, *Cro. El.* 883. *Cox* and *Cromwell*; and so a Repleader was awarded after Verdict.

If the wife take Corn and make Bread, and sell the Bread, this is the Trover and Conversion of the husband; so if she buys Cloaths, and makes a Gown and wears it, the Baron and Feme shall be charged in Trover and Conversion, *Sid.* 113.

Trover against Baron and Feme of the Trover of the wife, and Conversion of the wife during the Coverture. The Defendants pleaded not guilty, and stood against them. The Judgment was, That the Feme, sit in misericordia; where it ought to be that the Baron and Feme, sint in misericordia; for she cannot pay it without her husband: And it was erroneous also, because the Baron pleads with the wife, and does not confess the Action, for that is the cause of the misericordia. Also the usual course is in Actions against Baron and Feme for Trespas done by the feme during the Coverture, if they be thereof convicted to have the Judgment *ideo capiuntur* against both; yet this is no Offence against the Baron himself: And by all the Clerks this is their course, *Cro. Jac. 9. Wood and his wife vers. Dr. Sutcliff.*

Debt.

Baron and Feme cannot be joined in one Action of Debt against them for several Contracts, the one made by the wife *dum sola*, the other by the husband, as was *Revell and Gray's Case*. *Revell* brought an Action of Debt against *Gray* and his wife for 3 l. 18 s. and declared for 39 s. upon the wife's Contract *dum sola*, and the other 39 s. upon an *Infimus contractum* with *Gray* the husband after Issue joined, *nil debent*, and Verdict *pro Quer* Judgment was reversed, *Hob. p. 184.*

Debt against Baron and Feme for the Debt of the wife upon Obligation made by the wife *dum sola*. *non est factum* pleaded, and found *pro Quer* Judgment was that the Baron should be in misericordia, and that the Feme capiatur; and this being argued for Error, the Judgment was reversed, for it should be capiatur for both, *Cro. El. 381. Peircy and Sulst.*

On several Contracts, the one made by the Wife *dum sola*, the other by the Husband.

Quod Capiuntur.

Now Debt against Baron and Feme for the Debt of the wife must be in the *debet & detinet*, 3 *Law* p. 206. This was upon a Bond made by the wife *du sola*; the husband hath the Goods of the wife in his own Right, and so is the Register 140. *Walton and Powel's Case*. And if Debt is brought against Baron and Feme upon Recovery of Damages to the Feme *du sola*, it is good in the *debet & detinet*, 47 *Ed.* 3. 23.

For Rent.

Feme Lessee for Life takes husband, and debt lies against the husband for Rent incurred during the Coverture, 1 *Rolls Abr.* 592.

Debt on Lease made to a Feme when Sole, may be brought against the Baron Sole in the Life of his wife, because during the Coverture he is Assignee in Law, and receives the Profits, 1 *Keb.* 20.

Debt on Escape.

Debt. Whereas he recovered against *T. A.* and *Mary* his wife in Trespass 202 *l.* and *Mary* was committed in Execution, and that the Defendant insisted her to go at large. The Defendant pleads fresh Set. It was objected, this Action for Escape lay not, but Action on the Case; for she hath nothing but what is her husband's, and the husband is the principal Debtor, and subject to the Execution. *Per Curiam*. This Action lies as well as Case, for the wife was only committed to Prison, and not the Baron, and he is the sole Debtor who is imprisoned, *Cro. Jac.* 651. *Whiting* and *Sir Geo. Reynell*.

Escape.

In Debt on Escape the Plaintiff declares *J. S.* and his wife were in Execution, &c. and that they escaped on *nil debet*. The Jury found the husband was on Execution, and he escaped: And further, that the wife was not in Execution (being for Debt contracted before Coverture) and Judgment for the Plaintiff, though the Verdict was not pursuant to the Declaration in the whole, *Sid.* p. 5.

If a Feme Sole do owe me Money, and takes husband, I may very well have Action of Debt against her, and count that they owe me so much without saying *dum sola fuit*; yet this was the proper Debt of the wife when she was Sole, and now by the Marriage this is also made the Debt of the husband during the Coverture: And this was one *Grubb* and *Johnson's Case*, cited in *Bowles* and *Peere's Case*, 1 *Balf.* 136, 137.

Feme Sole owes Money, and takes Husband, Action lies against both.

Trespass.

Of Assault and Battery,

Against Baron and Feme the Jury found the Feme guilty, and not the husband: It was moved in behalf of Judgment, that this Verdict was against the Plaintiff; for in this Case he ought to have joined the husband only for Conformity, and he declaring of a battery of both, the Baron being acquitted, he hath lost of his Action: And so is *Telv.* 106. *Drury* and *Jennir's Case*; where Battery is brought against Baron and Feme, supposing that they beat the Plaintiff, to the Mare of the Plaintiff; and on not guilty, the Jury found the Feme only did the Battery, and not the husband: This Verdict was there said to be against the Plaintiff; for now it appears the Action of the Plaintiff to be *faux*, for the husband shall be joined in such Case but for Conformity, and there is a special Writ in the Register to such purpose. And it is not like to a Battery charged upon *J. D.* and *G. S.* where one may be found guilty, and the other acquitted, and good; for these are in Law several Tresspasses: But the Court in the principal Case gave judgment *pro Quer'*, and said that in *Telverton* was strange Opinion, 1 *Vent.* 93. But Action of Assault and Battery for beating the Baron and Feme, upon not guilty pleaded, the Defendant was found guilty of beating the wife only, and nothing was found

Jury finds the Feme only guilty, and not the Husband.

concerning the Battery of the Baron. *Per Curiam*, If *non cul* had been found as to the husband, it had been well; but here is a *non Liquer* as to him, *vid.* 10 Co. 130. *b.* and took a Diversity between, their being Plaintiffs and Defendants; for if there be a Mistake as to one of the Defendants, it may be well, as in Action on the Case brought against Baron and Feme for words spoken by them both, and the Baron be found not guilty, and the wife guilty, it is well. But afterwards it was held a void Verdict, because only part of the Issue was found, as 1 *Inst.* 227. and there is no Discontinuance, for the whole is continued; and by Ch. Baron *Bridgman*, *Venire de novo* awarded, *Hard.* 166, *Robell* and his wife against *Siedle* and his wife.

The Wife cannot plead by herself.

In Battery against Baron and Feme the Baron pleads generally not guilty; and the Baron and Feme *quod*, the wounding, plead not guilty, and *quod* the Battery, the wife pleads in Justification, *Et hoc parati est verificare*, where it ought to be *parati sunt*, *Cra. Co.* 594. *Watkinson* and *Turner* in such Case, *Cra. Jac.* 239. *Watson* and *Thorne*; the Baron justified, for that the Plaintiff assaulted his wife, in aid of whom the Feme justifies by her self, and pleads *son assaut damages*. Plaintiff replies, *De injuria sua propria absque Tali causa*; and both Issues found for the Plaintiff, and intire Damages. *Per Curiam*, It is ill, for the wife by her self cannot plead, and the Damages being intirely assessed, all was ill.

Assault and Battery by Baron and Feme against Baron and Feme, for Battery of the Plaintiff's wife. Upon not guilty pleaded, it was found the Baron was not guilty, and the wife was only guilty; and the Judgment was *quod capiantur*, and good, *Cra. Co.* 203. *Hales* and *White*.

Quod capiantur.

Trespass

Trespals was brought for mean Profits. The Count
was against Baron and Feme for Trespals done *cum*
verris suis, and saith not whether they were their
Heirs after, or hers before Coverture. *Per Curiam*,
it's good enough after a Verdict: for she may be
Executrix, and so by Marriage they may be his Goods,
but then the Actions should have been several, accord-
ing to their several Capacities: And if the Goods of
an Executrix after taking husband be stole, the In-
dictment must be of taking his Goods, 1 *Keb.* 944.
Collingwood and Bishop.

Trespals for
mean Profits.

Note, *In Transf. ad novam assignac' Des. placitar'*
liberum Tenementum ipsius Defendentis & E. Ux.
qui in iure, &c. Ad quod quer' dicit quod ipse fuit
ipsius quousq; disseit' per le Baron ad usum Ux. per
quod fuer' seisit' per disseinam & quod disseisset recen-
to. & Trasp. nul' faciend' mentionem de Agroement
ad Feme ul' disseit. Qu'. Car aliter de estranger.
Des' menteyne son Freehold & traverse le disseisin.
la Manuscripto Mri. Brownloe.

Action on the Case. Vide Words.

Action on the Case doth not lie against Baron and
Feme for negligent keeping of Fire in their House, by
which the House of the Plaintiff was burnt; for this
Action lies by the Custom of the Realm against Pa-
trons *familias*, and not against a Servant, or a Feme
Covert, who is in the nature of a Servant, 1 *Rolls*
Br. 2. Shelley's Case.

For negligent
keeping of
Fire.

Feme Covert, and another at her Request, are
bound in a Bond for the Debt of a Feme Covert, and
after the death of her husband she had assumed to
be the other harmless against that Bond; this *As-*
sumpsit shall not bind the wife, *Godb.* 138. in *Barton*
and Edmonds Case. Aliter in Case of an Infant.

Feme Covert
affirming her
self to be a
Feme Sole to
intice to Mar-
riage.

Action on the Case brought against Baron and Feme; because the wife affirmed herself to be a Feme Sole to intice the Plaintiff to marry her; Action lies not against Baron and Feme, because it is Felony; and all the ground of this is the Contract and Communication of the wife, which cannot bind her husband, *Sid. 375. Cooper and Wistham and his wife.*

Waste.

Writ & Count.

Waste lies not against the husband for Waste committed by him in the time of his wife. Feme Tenant for Life takes the Defendant to husband, who committed Waste, and his wife died, and Action was brought, and it was not brought in the *Tenuit*, nor the *Tenuit*; and therefore the Writ of Waste is not good, because it is variant from the Register, for it ought to have been the one way; and to make it Count special, and the Form of the Count was, because the Writ supposeth that the Baron *fecit vastum*; whereas the Baron being charged as Tenant in the Right of his wife, the Writ ought to have been *fecerunt vastum*. And the Court was of opinion that the Writ lies not against the Baron for Waste committed by him in the time of his wife; for he is to be charged by reason of his wife, and jointly with her, and she being dead the Action is gone, for it is but a personal Wrong done by her, though the Prothonotaries informed the Court that such Action had been brought against the Baron, and the Writ was *quod tenuit in jure Uxoris*, which the Court marvelled at, *Cra. El. 357.* and so is *1 Inst. 54.* Baron seised for Life of the wife, and in the Right of the wife, doth waste, and after the wife dies, no Action of Waste lies against the husband in the *Tenuit*, for that he was seised, but in the Right of his wife, and the Freehold was his wife's. But if Baron possess for years in the

Right

Baron seised in
Right of the
Wife, doth
waste, Feme
dies, and he
shall not be
charged.

Right of his wife, doth waste, and the wife dies, Action of Waste lies against the husband, for that the law gives the Term to him, 5 Co. 75. b.

A Lease for Life is made to A. the Remainder to a Feme Sole for years, they intermarry, Waste is committed, Lessor brings Action of Waste; he shall recover as well the Estate for Life, as for Years, 2 Leon.

17. If a Woman while she is Sole commits Waste and marries, the Writ shall be that the Woman while she was Sole committed the Waste. Feme Sole commits Waste and then marries.

A Man gives Land to his wife during the Minority of his Son, on condition that she shall not make Waste; she takes husband, who commits Waste; this is no breach, *Latch* 20. in *Webb's Case*, 2 Leon. 35. *Cobb and Priour*.

If a Man have Land in the Right of his wife, and commits Waste, and the Woman dies, no Action of Waste lies against the husband after the death of the wife, 1 *Brownl.* 238, 239.

Baron and Feme shall be punished in Waste for Waste made by a Stranger, 1 *Inst.* 54. b.

Feme Lessee for Life taketh husband, the husband doth waste, the wife dieth, the husband shall not be punished by this Law of *Gloucester*, c. 5. for the words *ut bone qui tient, &c. per vie*; and the Baron held for Life, for he was seised in the Right of his wife, and the Estate was in his wife, 2 *Inst.* 301. Stat. Glouc' c. 5.

If Feme Lessee for Life takes husband, who doth waste, Action lies against them both, 33 *H. 6.* 31. 17 *Ed.* 3. 68. b.

If Feme Lessee for Life takes Baron, who commits Waste and dies, Action of Waste lies against the wife for this.

Covenant.

Upon a Warranty in a Fine *sur concessu*. *Vide Supra*, *Pen Hale's Case*, 2 *Sand.* 177.

Account.

Action of Account was brought against a Feme Covert Administratrix, and her husband in B. C. and Judgment given against the Defendants *quod computant*. The Feme dies, and the Baron brings a Writ of Error in B. R. to reverse this Judgment. *Per Curiam*. This Writ of Error lies not, because the Record cannot be removed by it, for that would disturb the Proceedings in the *Common Pleas*, and the Party would have no fruit of his Suit if the Record were removed, nor any remedy to recover the Arrears due to him; yet the Original is determined by the Judgment given *quod computant*, and a *Scire fac'* lies by the Executor, as the Case here is, *Stiles* 290. *Spilhouse Case*.

Audita Querela.

Baron and Feme sue Execution after a Defeasance: On a Statute made to Baron and Feme, *Audita Querela* should be brought against both, 1 *Rolls Abr.* 311. although the Defeasance be void as to the wife; for the Action is in lieu of an Answer to the Execution which is sued by both, and it is all one as if the Baron alone had made the Defeasance which should be a sufficient Discharge, 11 *Ed.* 4. 8. b.

Abim

Actions against Baron and Feme upon Offences against a Statute. Vide Offences.

Information for Recusancy.

Regu.

The Baron is not to be joined where Fine and Imprisonment is to be; but on the Statute of Recusancy in keeping Alehouses, the husband must pay the fine, therefore must join, for it cannot be levied on her, though she commit the fault, 2 *Keb.* 468.

Information lies against Baron and Feme for the recusancy of the wife, to recover 20 *l.* the Month by the Stat. of *Eliz.* and the Stat. 7 *Jac. c. 6.* doth not alter any of the former Laws, but prescribes that a Feme Covert Recusant being convicted, if she after three Months do not conform her self, she shall be committed to Prison, unless the husband will pay 10 *l.* every Month that she shall be out of Prison and not conform. The Plea on Record is, *Et præd^a J. C. & Magdalena veniunt: Et præd^a Magdalena dicit se ipsa non esse culpab. &c.* and a Plea by a Feme Covert is void; but the Docket otherwise, and it was mended, *Cro. Jac.* 529. *Parker* and Sir *J. Curson's Case.* The Question in *Parker* and *Webb's Case*, *Cro. Jac.* 480. was, Whether a Feme Covert being convicted by Indictment at the King's Suit, be liable to the Suit of an Informer upon the Stat. 23 *Eliz.* after the year that she was convicted? *Vide*, for it was not determined.

It is resolved, That the husband is liable to the Penalty of 23 *Eliz. c. 1.* of 20 *l.* per Month, though he himself be no Recusant, 3 *Bull.* 87. *Le Roy* vers. *Lev.*

If Baron and Feme be sued in Debt for the Recusancy of the wife, both must appear, or both be Outlawed, *Hob.* 174.

A

A Feme Covert affirms she is Sole, and induceth *J. S.* to marry her; no Action lies against the husband, 2 *Keb.* 399.

The wife may not join Issue without her husband in Information against Baron and Feme for the Inculcancy of the wife, 2 *Rolls Rep.* 90.

Stat. 1 Eliz.
& 23.

Feme Covert is within the *Stat. 1 Eliz.* and the *Stat. of 23 Eliz.* refers to the first, and therefore a Feme Covert is *deins* *Stat. 23.* and therefore she shall forfeit for every Month 20 *l.* and this may be recovered by Information against Baron and Feme, as was resolved 35 *Eliz.* at *Ruffel-house* by *Puckering* Lord Chancellor, and all the Justices; but there it was resolved, if a Feme Covert be indicted for this at the King's Suit, the husband shall not be charged, because he was not Party to the Judgment; for if a Feme be indicted for any thing, the husband shall pay nothing, because he is not Party to the Judgment; but otherwise it is for Actions of Battery, and for Wounds, because the husband there is no Party to the Judgment; so it is also where the Informer informs, and this was the cause of making the *Stat. of 35 Eliz.* by which Statute the King may have Action of Debt, and so recover the Penalty against the husband, 1 *Rolls Rep.* 93. *Dr. Foster's Case.*

If Feme be indicted for a thing, the Husband shall not be charged.

In what Actions Husband shall be charged after the Death of his Wife, or not.

1 *Rolls Rep.*
351, 352.

If Feme Lessee for Life rendering Rent, takes husband and dies, the husband shall be charged in Action of Debt for Rent incurred during the Coverture, because he took the Profits out of which the Rent issued, 10 *H.* 6. 11.

If a Woman be indebted to another, and takes husband, and dies; the husband shall not be charged in Debt for this after the death of the wife, because it

The Law of Husbands and Wives.

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as but a Chose in Action, 10 H. 6. 10. 12. 20 H. 6. 12. p.

If Feme Lessee for Life takes husband, and dies, the husband shall not be charged for this during the Coverture, for he was never Lessee, 5 Co. Foliam's Case.

If A. take B. Executrix to wife, against whom Action of Debt is afterwards brought as Executors, and Judgment given against them to recover *de bonis propriis*; and upon this a *Fieri fac'* issues to levy the Debt and Damages; and the Sheriff upon this returns a *Devastavit*, and after the wife dies, it was held in *Trotman and Jane's Case*, whether Execution upon this Judgment may be sued against the husband, there not being any Judgment upon the return of the *Devastavit* to recover *de bonis propriis*, Car. B. R. Vide as to this *supra*.

Process.

Where the default of the Wife shall be the default of the Husband, and e converso.

Where the husband is to have a Corporal Penance for the default, there the default of the wife shall not be the default of the husband, 11 H. 4. 7. 9 H. 6. 8. If on a *pluries capias* the husband appears, and the wife makes default, this shall not be the default of the husband for the Corporal Pain. So in *Capias*, if the husband make default, and the wife appear. So if upon the Exigent the Baron and Feme have a *Superemendamentum*, and notwithstanding this they are returned outlawed; and at the return the Baron appears, and the wife makes default, this shall not be the default of the husband for the Corporal Pain, 9 H. 6. 8.

But

But otherwise it is where the Baron is not to have Corporal Pain by the default, 11 H. 4. 72. as if Baron and Feme are attached in a Trespals, the default of the wife is the default of both, and so the Issues follow. In Assise the default of the wife shall be the default of the husband.

In Action of Debt against Baron and Feme, if the Baron appears, and the Feme make default, the Baron shall not be put to answer, but Process shall lie against the wife, and *idem dies* given to the husband, M. 11. Jac. B. *Thoroughgood and Dunham*.

If Action of Waste be brought against Baron and Feme, and the Baron appear upon the *Distingas*, and the wife make default, this shall be the default of them both, 1 *Browne*. 239.

Receipt.

Where the Wife shall be received upon the Husband's default, and e contra.

In every Case that the wife is received for default of her husband, she shall plead and have the same advantage in pleading to defend her Right, as if she were a Feme Sole; but after receipt, she cannot levy a Fine, for that were to give away her Right, 1 *Inf.* 352. b. vid. 2 *Inst.* W. 2. c. 4.

After a Verdict against Baron and Feme the wife cannot pray to be received, *Hob.* 177. *Bell and Harley*. This was in Action of Waste.

A Receipt shall be by a Termor or Feme Cover, after a *nihil dicit*, 9 *Ed.* 4. c. 37. and a Receipt shall be by a Fine after a Writ of Enquiry of Waste returned, and the Waste required, *Cro. El.* 263. *Emmer and Thackam*.

In *Firmedon* the Tenant pleaded *non Tenure*, and found for the Demandant, and now the Feme after Verdict prayed to be received upon the feint Plea of her husband, because he had pleaded *non Tenure*, where she might have traversed the Gift, and he brought a Writ out of Chancery, *de Attornat' recipiendo* for the Feme. And *per Curiam*, It was received, for false Pleading is feint Pleading, and feint Pleading is within the Statute, and here needs not any new Declaration, because the Feme is Party to the Suit; *aliter* when he in Reversion is Party to the Suit, and is received, *Cro. El. 826. Gresham and Holmes.*

Baron and Feme Jointenants for Life, the Baron is impleaded, and made default, and the wife prayed to be received; but she is not receivable, because she was not Party to the first Writ; but he in Reversion shall be received, and shall abate the Writ for Jointenancy, *Moor 242. Caine's Case.*

Feme Covert hath a Reversion and Tenant for Life is impleaded, and she conceives her husband will not pray to be received; she may have a Writ directed to the Justices, testifying therein, that she will make such Attornies jointly and severally, commanding the Justices to receive them for Attornies; and it shall be mentioned in the Writ that she is decried, &c. and cannot come in Person, and pray to be received.

Ley Gager.

Debt against Baron and Feme for certain Barrels of Cloth sold to the wife *dum sola fuit*. They both waive their Law, and both Baron and Feme did swear according to the form of the Oath. *Quod nota*, the Baron did swear for the Debt of the wife, *Cro. 161. Weeks vers. Holmes and Ux.*

Baron and Feme both waive Law.

Baron and Feme: Or,

Account of the Receipt of 10 *l.* by the hands of the Plaintiff's wife. The Defendant waged his Law, because a Receipt by the hands of the wife of the Plaintiff or Defendant, is all one as Receipt by their own hands, *Cro. El. p. 919. Goodrick's Case.*

The husband and wife of full Age for the Debt of the wife before the Coverture, shall make their Law, *1 Inst. 172. b.*

In what Cases the Husband shall be compelled to appear and put in Bail for his Wife, or not.

Husband to remain in Prison till he puts in Bail for his Wife; in what Case or not.

In Action (as Debt) against Baron and Feme for the Debt of the wife; if the husband be taken by *Capias* or *Exigent*, he shall remain in Prison until he puts in Bail for his wife: And by the Clerks it is a common course. But in Action against Baron and Feme in *Banco*, if the husband comes in upon the *Capias* or *Exigent*, he shall not be compelled to put in Bail for his wife.

If the husband appear upon the Original in *B. R.* where it is against Baron and Feme, he ought to put in Bail for his wife.

If a *Latitat* Issue against Baron and Feme, and the wife is arrested but not the husband; the husband in this Case shall not be compelled by the Course of the Court to appear for himself and his wife, the husband not being arrested. *Per Curiam*, And the Clerks in *Story* and *Smith's Case*, *M. 10 Car. B. R.* But they say, that if the husband had been arrested, but not the wife, the husband shall be compelled to appear for himself and his wife.

In Action of Debt against Baron and Feme in *B. R.* upon the Statute of Recusants for the Recusancy of the wife; the husband who is in *Custia marit'* shall remain in Prison unless he puts in Bail as well for himself as his wife, *37 El. B. R. Philpot and*

Tony.

Young: But it is in the Election of the Court, whether they will compel him to give Bail for his wife, or not; for all Bails are in the Discretion of the Court; so *Hob.*

Loveless's Case. In Debt for the Recusancy of the wife, the husband may not appear by *Superedeas* only, for either they ought both to appear, or both be Outlawed.

Latitat was sued against *J. S.* and *A. S.* Baron and Feme, by *T. D.* The wife was arrested, but the Baron could not be taken. The Sheriff returned *Cepi Corpus* for the wife, and *non est inventus* for the Baron. And the Court held nothing could be done in this Case, unless there were Bail put in by the husband; for the same without the husband cannot be sued, nor can put in Bail; and against the husband, unless he be first taken and put in Bail, there cannot be any Declaration, and therefore in this Case, in regard the Plaintiff cannot declare, the Feme was dismissed; and it was said he ought to sue them by Process of Outlawry, and by that means he might have remedy: For it were a great mischief that a Feme Covert should intermeddle, and merchandize, and procure Goods into her hands, and the Baron absenting himself, or keeping in his House, there should be no remedy against them, *Cro. Jac.* 445.

Latitat against *J. S.* and his Wife, the Wife was arrested, but the Husband could not be taken.

Remedy by Process of Outlawry.

The Court of *King's Bench* was moved on the behalf of the Lady *Balsinglaff*. There was an Action in the Case brought against Baron and Feme, and the Feme appeared, and the husband would not, and the Plaintiff's Attorney stood to have special Bail for her; which she could not procure, and therefore she was prayed she might be delivered on common Bail: But by *Glin*, if there be cause to have special Bail, the wife must lie in Prison until the husband appear and put in Bail for her; for she cannot put in Bail for herself, she being a Feme Covert, *Stiles* 475. Action of Debt against Baron and Feme upon the *Latitat*. The Feme appeared, she shall be accepted *Curiam*; but where the Feme is in Execution, she

Feme Covert
appeared on
the Latitat:
Q^r. If she shall
be dismissed.

she shall not be discharged, nor could the Lady *Ad-
tinglast*, who was in *Custodia* only upon Process:
But *per Curiam*, She ought to be discharged, and that
without Bail, if it appear upon the Writ that she is a
Feme Covert; but if she be sued as a Feme Sole, she
shall put in Bail. And by *Twifden*, it is an unreason-
able Course, that the wife because she cannot appear
by *Radditise*, but in *Custodia*, therefore she should
not be dismissed as in *B.C.* else would this be as good
as a Divorce, a continual *non est inventus* being re-
turned against the husband, and no Declaration can
be against her, and so she shall be always in Prison.
And this being but an Arrest on mean Process, and
to say she is in *Custodia*, is no reason, because when
he comes in he shall find Bail for himself and his wife,
and so the Plaintiff may declare against them both in
Custodia. *Per Curiam*, She was discharged. These
Opinions have been in this Case: 1. That she should
lie in Prison till the husband come in; and that un-
reasonable. 2. That she ought to file a common bail
if another will be bound for her, which may prevent
a Fraud in arresting of her at the beginning of a long
Vacation; this the Court conceived reasonable; but
it is at the Election of the wife whether she will or
not. 3. That she ought to be discharged without
Bail, which the Court conceived reasonable, and so
awarded here, 1 *Keb.* 187, 188. *Bar* and *Desmond*.

Entry as to
appearance.

In Action against Baron and Feme, and the Feme
was an Infant, and the wife appeared *per Attornat*'s
whereas the Court ought to have admitted her *per
Guardian*'s, and for this it was reversed; but if the
wife be of age, then the Baron makes Attorney for her
and himself, and the Entry is *per Attornat*'s of the
husband and wife; and by *Hale* the husband cannot
disallow the Guardian made by the Court for his wife,
1 *Vent.* 185. *Freeman* and *Reddyle*.

Suit against Baron and Feme; the Feme is arrested
and giveth Bond for her appearance, and now prayed

to be delivered on common Bail. The Sheriff having returned *Capi Corpus* of the Baron and Feme both having only taken her; but the Court denied after return of *Capi Corpus*, *contra* if *non est inventus* had been returned as to the husband: But yet if it appear only a Practice, they will discharge her; to examine which, they gave rule to the Sheriff to return the Body of the husband, 1 *Keb.* 367. *Detbick* and *Taxby* and *Ux.*

Debt was brought against Baron and Feme for Debt supposed to be due from the wife *dum sola* was, and there was special Bail put in; and after judgment against Baron and Feme, they tender themselves to Prison in discharge of their Bail, and it was moved for the wife to discharge her, because there was not any Debt due from her before Marriage, but that this Action was contrived between the husband and the Plaintiff to make the wife a Prisoner. And it was agreed, That on mean Process if the wife be taken before the husband, she shall be discharged; and when the husband is taken, he shall give appearance for both; but upon Execution the wife may be taken before her husband, and shall be detained: But in this Case the wife, because of the Practice, was discharged, *Sid.* p. 395. *Gabree's Case*, 1 *Keb.* 442, 576. *Mesme Case*.

On mean Process, if the wife be taken before the Husband, she shall be discharged: Not so upon Execution.

If Baron and Feme be arrested in an Action which requires special Bail, and the husband puts in Bail for himself, he must put in Bail for his wife also; but if he lies in Prison, the wife cannot be let out upon common Bail; *aliter* if the husband abscond himself, and cannot be arrested, 1 *Vent.* 49.

Baron to put in Bail for his Wife.

Note, For a Rule; Unless the wife be arrested, or the husband give Bond for her appearance, he shall not be forced to put in Bail for both if he will lie in Prison, but else he shall before he can be bailed in Debt on a Statute entered by the wife *dum sola*, against

Reg.

Baron and Feme : Or,

Baron and Feme : And the Court agreed ; so the husband must put in Bail for both, though she was never arrested. And so it's said, The husband in Execution on an Action brought against him and his wife, is not bound to appear for her, unless she be arrested ; but he shall not be discharged, unless he put in Bail for himself and her, 1 *Keb.* 213, 225, 277. *Cramer* vers. *Andrews*.

Escape.

The Escape of the husband is the Escape of the wife, and in *Ca. Sa.* against Baron and Feme, the Gaoler suffered the husband to escape, the Court said they would discharge the wife unless the Plaintiff would get the husband taken again, 1 *Vent.* 51. *Jackson* and *Gabres*.

Privilege for the Wife of an Attorney.

If Action be brought against Attorney of King's Bench and his wife, and he declares against the husband being an Attorney of the Court in proper Person, and against the wife in *Custodia Marit* upon Bail filed for the wife only ; this is not good, because the husband ought to put in Bail for his wife, and Bail may not be filed only for the wife without Bail for the husband, and the husband may not have his Privilege in this Case, when the Action is brought against him and his wife, 1 *Rolls Abr.* 580. *Mortmain* and *Elsey*. *Per Curiam*, He ought to put in Bail, *Stiles* 226. *Mesme* Case, and *M.* 17 *Car.* 1. See *Simon Fanshaw's* Case.

In Process of Outlawry Bail refused for the Contempt of the Wife.

It is the Custom of *B. R.* where Process of Outlawry issues against Baron and Feme, and the Baron appears, he shall have day by Bail until the appearance of his wife ; but it is in the Discretion of the Court when he comes in upon the Exigent, whether he should be let to Bail ; and this Court used not to let the husband to Bail, but to continue him in Prison for the Contempt of his wife until the Feme comes in, and therefore the Bail was refused, *Cry.* 2370. *Philpot's* Case.

For Debt due by the wife before Marriage the husband was returned Outlaw'd, and the wife waved; but before the return of the Exigent one E. an Attorney procured for the wife a *Superfedeas*, furnishing that the wife had appeared by him as her Attorney. *Per Curiam*. If upon the Exigent the Sheriff had returned *reddidit se*, or upon *pluries Capias* had returned *Cap. Corpus* for the wife, then her appearance should be entred, but not by Attorney, as it is here, and the Exigent should only issue against the husband, and *idem dies* should be given to the wife: But if upon a *Pluries Cap.* the Sheriff return for the husband *Capi Corpus*, and a *non est inventa* for the wife; then an Exigent shall issue against both, because it is undeniable that the husband may bring in his wife; but if upon Exigent the Sheriff returns *reddidit se* for the husband, and for the wife, and she is waved, the husband shall go *sine die*: But in this Case, because the Exigent was returned against both to be outlawed, the *Superfedeas* supposing the Appearance of the wife, is idle and void; and therefore it was dissolved, and the Exigent appointed to be filed against both, *Cro. Car. 58. Smith* vers. *Ash* and his wife.

Upon the Sheriff's return in Outlawry.

Process continues against Baron and Feme till the Exigent upon which the husband appeared, and put in a *Superfedeas* for himself only, without making mention of his wife: The *Preignotaries* said, by the *Superfedeas* the husband is *sine die*, for he shall not be taken to answer without his wife as this Case is, and is impleaded as in the Right of the wife, and therefore the wife shall be waved, and the Baron discharged, *Lib. Intr. 187.* But the Court gave order that the *Superfedeas* should be stayed without recording the Appearance of the husband; as so was it in the Case of *Lady Mallory* and her husband, who were sued in Action of Debt, and Process continued against them till the Exigent; upon which the husband appeared, and put in a *Superfedeas* for himself without speaking

They are at Exigent, no *Superfedeas* shall be received for the Baron without the Wife.

of the wife; and his *Superfedeas* was not allowed, but Process continued until Outlawry, 1 *Leon.* 138, 139. *Bilford* and *Fox*.

In Chancery.

If a Man be served with a *Subpoena* in London against him, and his wife being in the Country; yet if he satisfy not the Court as well for her as for himself, he being here in Person, an Attachment shall be awarded against him and his wife, as though he had never appeared.

Outlawry.

If the Record be that the wife is Outlawed, this is erroneous, for it ought to be waved, 2 *Rolls Abr.* 304. *Hayman* and his wife.

Wife in what Case may make an Attorney.

Pascb. 42 *Eliz.* *H.R. contra*: Process in Debt against Baron and Feme continues until the Exigens; the Baron appears, but will not suffer his wife to appear: And it was ruled *per Cur'*, That in this Case she may make an Attorney to prevent that she be not waved, *Dyer* 271. *b. margin*.

Exception to avoid an Outlawry in Baron and Feme.

In 3 *Bulst.* 212. Exceptions were moved to avoid an Outlawry in Baron and Feme: 1. Because the wife cannot be said Outlawed, but waved. 2. It was *compauit* for *comparuerit*. *Per Curiam*, In the same Term such an Outlawry may be avoided upon Exceptions by a motion in Court; but this being in another Term, the same could not be avoided but by a Writ of Error: And the Court bailed him upon the Writ of Error; but they said he ought to appear in Person next Term, and so assign his Errors to reverse the Outlawry.

Debt was brought against Baron and Feme for Debt *dum sola*, and upon this the husband was Outlawed, and the wife waved; the wife was taken and imprisoned, but the husband could not be found, and the wife was discharged upon the Act of Indemnity, which pardons Outlawries, without suing a

Scire

Scire fac' against the Plaintiff, and it was said she might not have a *Superfedeas*: But *Hutt. Rep.* 86. 1 Co. 44. b. 3 Cro. 370. 1 Cro. 58. she may in this Case have a *Superfedeas* upon the Exigent, *Sid. p.* 20, 21. *Biron and Beckley.*

In Trespass against Baron and Feme if the Baron comes in by the Exigent, and the wife comes not in, and for that it appears to the Court that the Exigent was discontinued against the wife, they award a new Exigent against her; yet the Baron shall be put to answer presently, and shall not tarry till the wife comes in although he ought to answer again with the wife when she comes in; when he hath pleaded, he shall have *idem dies* with the wife, 30 Ed. 3. 18.

In Trespass against Baron and Feme, if the Baron make default, and the wife appears, the wife shall not be put to answer till the Baron comes in, or be Outlawed, 22 Aff. 46.

The wife may not plead to Outlawry without her Baron, nor plead Pardon of Outlawry without her husband, 2 Rolls Rep. 90. *Sir Geo. Curson's Case.*

She may not plead to Outlawry without her Husband.

C H A P. XXIX.

Declarations and Pleadings.

The manner of declaring against Baron and Feme, or by Baron and Feme. - In what Cases the Life of the Wife must be averred, or not. Where the Husband shall be estopped to say that his Wife is committed, and yet she shall be received. In what Cases the Wife shall come in, and be received on the Default of her Husband. Of the Wife's Pleading without her Husband. The manner of Pleading Coverture. Of the Conclusion of Pleas in Action by or against Baron and Feme. Where it is necessary to aver the assent of the Husband. Treasons when that the Wife died seised. Ad tunc & modo Uxor. if good. Of Estoppels. Error assigned because she was a Feme Covert. Divorce pleaded. Outlawry pleaded. Where there be two Women of a name in Debt on Bond, how to plead. When the Parol shall demur for the Nonage of the Husband and Wife.

Tort.

IN *Assumpsit* the Plaintiff declares, where T. S. and M. his wife were seised to them, and the Heirs of T. of five Acres of Meadow lying near a River called W---River; and being so seised by Indenture, let the same to the Plaintiff for 21 years, by force whereof he was posselt. The Defendant such a day Erected a Watermill *super & trans.* the said River; by reason whereof *obstupavit* the Water, so that the Water overflowed the Banks, and *inundavit* the said five Acres of Meadow, by which they became barren, and *scirposæ, ad damnum, &c.*

The

The Defendant demurred in Law upon this Declaration: Exception 1. Because he counts the Baron and Feme were seised to them, and the Heirs of the Baron, and sheweth not how the Estate began; for it being a special Estate, and but a particular Estate in the wife, the Commencement of it ought to be shewed. *Sed per Curiam*, It's well enough, it being in Action on the Case by their Lessee; so that it is but a Conveyance to the Action, and the Inheritance is in the husband. Exception 2. Because he declares of a Lease by husband and wife by Indenture, and sheweth not that a Rent was reserved, and then it cannot be the Lease of the wife. But the Court held it to be good; for it is the Lease of the wife till she dies, *Cro. El. 112. Jackson and Mordant.*

That Baron and Feme were seised, and shews not how the Estate began.

Baron and Feme, and the Heirs of the husband, seised in Fee of a Watermill, and prescribe a Watercourse, &c. and the Defendants erected a new Mill, *et obstravit*. Exception was taken to the Declaration, because the Prescription is alledged in the Baron and Feme, and the Feme had only an Estate for life, and so cannot prescribe *sed, non alloc'*; for when the Feme is jointly seised with her husband, who had the fee, the Prescription may be alledged in both, *On. El. 112. Brown and Mordant.*

Prescription alledged in Baron and Feme.

Plaintiff marries with *Alice* Executrix of *J. S.* her first husband. Defendant was indebted to *J. S.* in 100 *l.* and promised the Plaintiff if he would forego his Suit against him for the Debt till *Michaelmas* next, that then he would pay the Debt to the Plaintiff; and avers how that the Defendant was not sued till *Michaelmas*, and found *pro Quer' sur non assumpsit*. *Sed nil capiat probillam*; because the Plaintiff doth not aver the Life of *A.* his wife, who was the Executrix of *J. S.* for the Promise of the Defendant was made in respect of a Debt *en autre droit*, which was to *Alice* as Executrix, and not in respect of any Debt due to him; then the Promise ensues

Assumpsit.

Averment of a Life.

the

the nature of the Debt, (*viz.*) to be recovered to other use, (*viz.*) to the use of *J. S.* and shall be liable to sets, and by the death of the wife the Promise is terminated: And though the Plaintiff may not join the wife with him in the Action, because the Promise was particular and personal, yet he ought to have averred the Life of the wife, because the Plaintiff shall recover nothing to his own use, *Yelv. 84. Lea and Minn.*

Averment.

If a Feme Covert, or a Monk and a Stranger, are bound in an Obligation: In Debt upon this Action shall only be against the Stranger, and he shall not say in the Declaration that the other is a Feme Covert, or a Monk; *per Coke and Doddridge*; but by *Houghton*, if it doth not appear in the Declaration she is a Feme Covert, it ought to be averred, *1 Mod. Rep. 41. 32 H. 6. 31.*

But of the manner of declaring by or against Baron and Feme, so *Vid. Sparfem, per Touts Titles.*

Pleadings.

Rescript. Vide Rescript.

Littleton's Case, Sect. 666. is a nice Case. If a Woman seised of certain Lands in Fee taketh husband, who alieneth the same Land to another in Fee; the Alienee lets the same Land to the husband and wife for Term of their two Lives, saving the Reversion to the Lessor and his Heirs: In this Case the wife is in her Remitter, and she is seised in Fee before, and the Lessor hath nothing in the Reversion. But in this Case if the Lessor will sue an Action of Waste against the husband and his wife, for that the husband hath committed Waste, the husband cannot bar the Lessor by shewing this; that the taking back the Estate to him and his wife, was a Remitter to the wife,

Remitter.

wife, because the husband is estopped to say that which is against his own Feoffment. But if the husband make default to the grand Distress, and the wife pray to be received, she may well shew the whole matter, and how she is in her Remitter, and she shall bar the Lessee of his Action; for in every Case where the wife is received for default of her husband, she shall plead, and have the same advantage in Pleading as if she were a feme Sole, &c.

If Judgment be to be given for two defaults, and after it is adjourned till another Term, the wife shall not be received this Term before Judgment, for that she does not come in *parata petenti respondere*, in due time, 9 H. 6. 37.

In Action of Waste against Baron and Feme, after the Waste found before the Sheriff, and returned in Banco, the wife shall not be received, to avoid contrary Verdicts, 2 H. 4. 6.

In Assise against Baron and Feme, if they plead Recovery in Bar, and at the day fail of the Record, by which Judgment is to be given by the Statute as Disseisors, yet the wife may be received, 7 H. 4. 16. b. 10 H. 4. 9th.

In Action of Waste against Baron and Feme, and no Waste pleaded, the wife shall be received after Inquest taken, and before Judgment, 22 Aff. 11. 28 Ed. 3. 91.

If in a Writ of Error to reverse a common Recovery brought against Baron and Feme, and the Baron and Feme are returned Terretenants *Ost. ab. Trin.* and then they appear, and the Plaintiff assigns Errors, and after the husband does not put in any Plea but makes default, on which the Plaintiff prays the Error may be examined: But after in *Hill. Term* the wife comes in, and saith this is her Land, and prays to be received. It was doubted in the Earl of Oxford and Muschamp's Case, whether she shall be received, in

in as much as she comes before Judgment, II *Car. B. R.*

In *Formedon* the Tenant pleads Non-tenure, and found for the Demandant; and now the wife of the Defendant after Verdict prayed to be received upon the feint Plea of her husband, because he had pleaded Non-tenure, where she might have traversed the Gift; and he brought a Writ out of Chancery *de Attornat facienda* for the wife. And *per Curiam*, It was received; for false Pleading is feint Pleading, and here there needs not any new Declaration, because the wife is Party to the Suit; *aliter* where he in Reversion is not Party to the Suit, and is received, *Cro. El. 312. Greshold and Holmes.*

Where there
needs a new
Declaration
or not.

Of the Wife's Pleading by herself.

In Battery the husband justifies, for that the Plaintiff assaulted his wife, in aid of whom, &c. The wife for her self pleads, and justifies *de son assault demourant*. The Plaintiff saith, *de injuria sua propria absque tali causa*: Both Issues are found for the Plaintiff, and the Damages are entirely assesse'd, all is ill; and a Repleader was awarded, *Cro. Jac. 239. Thorpe and Watson.*

Assumpsit was brought on the Promise of the wife *dum sola*. The Plea was entred in this manner; *Et præd' J. N. & Bridgetta ven' & Def. &c. & præd' Bridgetta dicit quod ipsa non Assumpsit: Verdict pro Quer' Per Curiam*, It is ill, for the wife cannot plead by her self, (except in Receipt) and the Trial is idle, and not helped by any of the Statutes of *Jeofailes*, and a Repleader was awarded, *Cro. Jac. 288. Tampion and Newson*: It ought to have been *quod præd' J. & Bridgetta dicunt quod ipsa Bridgetta non Assumpsit*, *Yelv. 210. Mesme Case*; so

Cholmly

Chalmly and Apsey's Case cited there: Action was brought against Baron and Ferne for words spoken by the wife, and the wife only pleads not guilty, and Verdict *pro Quer'*; but could not have Judgment, but a Repleader was awarded.

Of Pleading Coverture.

Debt on Bond against Ferne. Defendant pleads that at the time of the making the Bond she was wife to J. J. who as yet in *plena vita existit*; *Et sic non est factum*. The Plaintiff shews how that after this Bond made, there was a Suit in the Spiritual Court concerning the Marriage between the said J. J. and the Defendant, and for that he had another wife alive at the time of the Espousals with the Defendant, the Defendant's Marriage was by Sentence adjudged void and null; and avers the Life of the first wife at the time of the second Marriage with the Defendant, and demurred upon it; judged *pro Quer'*: For this Divorce is but Declaratory, because the Marriage was merely void, and there needed not any such Sentence of Divorce; for it was void *ab initio*, and she always was Sole, *Cro. El. 857. Riddleston and Wogan*.

Eliz. W. brought Trespass by the name of a Widow. The Defendant pleads she was Covert Baron, (*viz.*) of one J. W. who is in full Life at Lisbon in Portugal; and this Plea was disallowed for the Impossibility of the Trial, *Moor 851. Eliz. Wilmet's Case*. Plea disallowed for the Impossibility of the Trial.

After Imparance as Ferne Sole in Trespass and Assault, the Defendant pleads that at the time of the Bill exhibited, she was Covert, and concludes in Bar. *Pro Curiam*, This is but as a Plea in Abatement, and therefore granted a *respondens Ouster*, *1 Keb. 822. Jack and Carolier*.

On

Regu.

On Obligation Infancy must be pleaded, and the Party cannot be aided on *non est factum*; but a Feme Covert may, 3 *Keb.* 228. for it's a Rule in every Case where the Obligation is void, he shall conclude *non est factum*, as a Feme Covert shall plead *non est factum*, for it is void as to her; otherwise where the Bond or Deed is only voidable, for there he shall aver the special Matter, and conclude Judgment *si avo*: For when the Deed is voidable, and so remains at the time of the Pleading, (as in case of Sealing a Bond by the Infant, or duresis) here he cannot plead *non est factum*; but it must be avoided by special Pleading, and conclude Judgment *si avo*, 5 *Co.* 119. *Whipdale's Case*.

Debt by *H.* against *J.* and his wife. The Defendant pleads that *tempore Confectionis*, and then the day that she was Covert Baron. The Plaintiff confesseth it, but saith that the same day she sealed it was the day of the Marriage in the Morning before the Espousals. The Defendant demurs, and the Plaintiff had Judgment, 2 *Rolls Rep.* 431. *Jackson's Case*.

Debt on Bond. The Condition was, That *S.* the Defendant with his wife, should appear at the *Magistrals-Court*, and for Non-appearance the Action brought. *S.* appears and pleads, that at the time of the Obligation he was *solus & innuptus*. The Plaintiff demurs. *Per Roll*, This Plea is not the same with *ne' unquæ decouple*; for one extended to a Feme *de facto*, the other to a Feme *de jure*: but Judgment *pro Quer'*, *Stiles Rep.* p. 17. *Paine and Strome*.

Conclusion of Pleas.

Vide *Supra*. *Non est factum*.

Battery against Baron and Feme. They plead *Quoad* the Wounding *non culp.* & *Quoad* the Battery,

Battery, the Feme pleads in Justification, and concludes with an Averment, *Et hoc parata est verificare. Et hoc parata*
 The Question was if it ought not to be, *Et hoc parati est verificare.*
sunt verificare? and by the opinion of some the husband ought to have joined with the wife, *Cro. Car.*
 194. *Pelham and Hemmings.*

Trover against Baron and Feme, and that the wife
 the Coverture found the Goods, and converted them
 in her own use. They plead *quod ipsi non sunt culpabiles* *Quod ipsi non*
 and it was held ill, for that no *Tort* is supposed *sunt culpabiles.*
 in the husband, and they ought to have pleaded *quod*
ipsa non est culpabilis, *Cro. Jac. 56. Cox and Crop-*
well.

Action of Assault, Battery and Wounding against
 L. and his wife. The Defendants plead *non culp.* as to
 the wounding. The Feme pleads a special Plea in
 Justification, that what she did was in the defence of
 her husband. The Plaintiff replies, *De injuria sua pro-* *De injuria sua*
pria, and does not traverse *absque tali causa*, and the *propria.*
 jury finds intire Damages. *Per Curiam*, The Issue
 joined is an immaterial Issue, and there can be no
 judgment; and a Repleader was awarded, *Stiles p.*
198. 210. Jennings and Lee.

Trespass against B. and Ux. *simul cum Bennet*, of
 an Assault. The Defendants plead his Assault on
 them. The Plaintiff sheweth forth a Writ taken out
 against the husband: To which the Defendant de-
 murred; 1. Because the Writ is not said taken forth
 against the Defendant, *simul cum Bennet, sed non al-*
loc. 2. The Replication is only of the Arrest of
 the husband: *Sed non alloc.*; the wife coming in af-
 ter the Assault begun, and need not be *de injuria sua*
propria as to the wife, 3 *Keb. 763. Puller's Case.*

Debt on Bond conditioned for the Performance of
 Covenants in an Indenture between W. S. and A.
 his wife of the one part, and the Plaintiff of the other
 part. The Defendant pleads the Indenture as the In-
 denture of W. S. and A. his wife, whereas in truth
 the

Whether it be the Feme never sealed. The Plaintiff replies, That a Deed of the Indenture shewed by the Defendant *non fuit facta* inter W. S. and A. his wife on the one part, and the Plaintiff on the other : The Jury find the husband sealed it, but the wife did not. *Per Curiam*, The Verdict is found against the Defendant, who pleaded it as the Deed of the Wife, and it was held, that the Plaintiff is not estopped to say that the Deed shewn is not the Deed of the Baron and Feme : but he is estopped by the Condition to say, that there is not any such Indenture. Two of the Judges held, that if the Baron had sealed and delivered it in the name of the Feme, it had been the Deed of the Feme during the Life of the Baron, *Cro. Eliz.* 769. *Sleep and Stead.*

Estoppel.

Where it's necessary to aver the assent of the Baron, or not.

If an Estate be made to a Man's wife *de novo*, it is not necessary to aver his Assent, for it vests till he dissent, *Hob.* 204. but if the Feme Covert hath a Lease for Life and surrender it, and take a new one, the husband's Assent is necessary, because the wife had an Estate before, which cannot be divested but by his Assent to the later Estate.

Traverse.

In Trespass the Defendant pleads in Bar, that such an one was seised of the Land in the Right of his wife, and that his wife died seised, and that he was Heir to her, and gave colour to the Plaintiff. The Plaintiff replied, that the Baron and Feme were jointly seised, and that the wife died, after whose Death the husband was seised by Survivorship, *Ab quibus* that the wife died seised. *Per Curiam*, This Traverse is not good that the wife died not seised, but it ought to be that she died not Sole seised, *Windsor* p. 7.

Adtunc & modo Uxoris.

In Replevin the Defendant makes Avowry in the Right of Mary, *adtunc & modo Uxoris ejus*, of the taking of Cattel as a Distress. The Averment of *modo* the wife is certain enough, 2 *Keb.* 729. *Pao versus Longvile.*

In Trespass the Defendant justified by Licence to the Defendant for himself and his wife, to inhabit there. The Plaintiff replies, *Non Licentiauit*, the husband and wife *modo & forma*, and it's found *Modo & forma non dedit Licentiam modo & forma*. This is a Variance, 3 *Keb.* 755. *Jepson and Jackson*.

Debt was brought by B. and his wife against the Defendant for Arrears of Rent upon a Lease for years made by the Feme and her first husband, to the Defendant by Indenture. The Defendant pleads that the Ancestor of the first husband was seised in Fee, and that it descended to the first husband, and that he was Sole seised, and so the Feme had nothing at the time of the Lease made. The Plaintiff demurs, and shews for cause, that the Lease being by Indenture, the Feme hath the Reversion by Estoppel against the Estoppel Lessee, and the Defendant cannot contradict it, and say she hath nothing, 11 *H.* 4. 1. But *per Curiam*, The Plea is good; 1. For in this Case it is no Estoppel, for the Deed is utterly void as to the Feme, she being Covert, and it cannot be an Estoppel, for an Estoppel ought to be mutual on both parts, and the Deed of a Feme Covert cannot estop her, or bind her to any effect, *Cro. Eliz.* p. 700. *Brereton versus Evans*.

If Land descend to a Feme Covert, Entry shall be pleaded by the Baron and Feme in Descent to Daughters; he shall say, *Post cujus mortem reversione Tenementorum præd' cum pertin' descend' præfat' A. & B. filiabus & coheredibus præd' W.* You shall never say, *Et se tenuit intrus*, but where they are in of a joint Estate; for if a Feme Tenant for Life take husband, and the husband dies, you shall say, *Obiit post cujus mortem præd' le Feme fuit seista Tenementis præd' in dom' suo ut de libero Tenemento*. *Est Manuscripti; Abi. Brownl.*

If Land descend to two Women Covert, and they enter, and the husband of one dies; you shall say, *La Feme survive & fuit seifita de medietate Tenementorum in feodo.*

Note, When Land is given to Baron and Feme in Tail special, and the Baron dieth, the wife if she will maintain the Estate Tail, must alledge that the Baron and she had Issue in *plein vie A.* otherwise she is but as Tenant in Tail after Possibility of Issue extinct, which is but as Tenant for Life.

Nil detinet to
Action for
Arrears of
Rent.

Annuity is devised by Will to a Feme Covert for Life, who dies, the husband brings Action of Debt upon the Statute of 32 H. 8. for the Arrears against the Administrator of the Terretenant. To which the Defendant pleads *nil detinet*; if a good Plea or not, *Hard.* 332, 333. because the Action is grounded upon a Will in writing, which (as was urged) was equivalent to a Deed, and to a Deed it were not a good Plea. As in Case of Debt upon Bond or Speciality; but by *Hales* a Will is not a Deed, and *nil detinet* is a good Plea to Action of Debt grounded on a Will.

Marriage a-
verred.

In Avowry as Bailiff to Baron and Feme for Rent Arrear. The Plaintiff demurred specially, because the Marriage is not averred, *sed non alloc'*; but by *Hales* the Life of the wife is not averred, which is ill on special Demurrer, but on Verdict or general Demurrer it would be well enough, 3 Keb. 151. *Harlow* and *Bradnock*.

Error may be
assigned that
she was a Feme
Covert at the
time of the ap-
pearance, tho'
she appeared
and pleaded as
a Feme Sole.

If Action on the Case be brought against A. S. a Feme Covert as a Feme Sole, and she appears, and pleads to it as a Feme Sole, and Judgment given against her, upon which she and J. S. her husband brought a Writ of Error; they may assign for Error that she was a Feme Covert at the time of the Appearance

pearance and Pleadings, &c. for otherwise the wife may be taken *ad Executionem*, without the Conscience of the husband, and so be bereaved of the Society of the Woman, and he hath no other means to defeat it, 1 *Rolls Abr.* 759. *Edwards and Simpson.*

B. and Anne his wife were Plaintiffs in *Assumpsit* against *Hudson*; and declare in consideration that *Anne dum sola fuit* would marry one *Tbo. M.* at the request of the Defendant, the Defendant promised after the death of *Tbo. M.* to pay to the said *Anne* 40 *l. per annum* during her Life; and shews that upon this she married *Tbo. Mason*, who after dies, and she took to husband *B.* the Plaintiff, and that 4 *l.* is in arrear for 2 years after *Tbo. Mason's* death. Release pleaded in *Assumpsit*.

The Defendant pleads in Bar a Release made to him by the said *Tbo. Mason*, during the Marriage of *Anne*. The Plaintiff demurs, and adjudged for the Plaintiff. This Release doth not discharge the Promise, because though the Promise was present, yet the Execution of it was in *futuro*, and such that he which releaseth it can never have an Action for it; *aliter* if he by express words released all Promises, or all Actions and Quarrels which he or his wife had or might have; for a Promise being a special Cause of Action, may *Esse*, unless by express words, not be released until it comes in *Esse*, no more than a Covenant, *Yelv.* 156. *Belcher and Hudson, Cro. Jac.* 222. *Hob. Smith and Safford's Case.*

Debt against Baron and Feme as Executrix to her former husband, upon a Bond of 200 *l.* The Defendants, by *J. G.* their Attorney, plead, (*viz.*) *Præd' Job' and Margareta* by their Attorney plead that they were divorced before the Writ purchased. Divorce pleaded. The Plaintiff demurs, 1 Because it is not alledged that the Divorce did continue, for it may be it was repealed; *sed non alloc'*, for it shall be intended to continue if the contrary be not shewed. 2. Because they plead a Baron and Feme, *Et præd' Job' & Margareta,* and

and that after Imparlance ; *sed non alloc* ; for they do not plead, *Et præd* *Johannes & Margareta Ux. ejus*, for then it should be an Esloppel, *Cro. Eliz.* 352. *Underhill* vers. *Johannem Brot* and *Margaret* his wife.

Where the Baron may plead as a Devise to him Sole.

Outlawry pleaded.

An Estate is devised to a Man and his wife, and their Heirs : If the husband survives, he may plead it as a Devise to him Sole, *Cro. Eliz.* 359.

Outlawry in the husband cannot be pleaded where he and his wife sue as Administrators, *Hab. p.* 60.

Debt on Bond entred in to *Elizabeth Perkins*, who was the Plaintiff's wife, and as her Administrator brought the Action. The Defendant pleads he delivered the Bond to one *Elizabeth Perkins* his Sister, *quæ obiit sola & innupta, absque hoc*, that he delivered it to *Elizabeth Perkins* the Plaintiff's wife. Special Demurrer. If it be taken that there be two of the name, the Defendant should have pleaded *non est factum*, for it amounts to no more, or at least he ought to have induced his Plea that there were two *Elizabeth Perkins*'s ; but this Traverse is designed to bring the Marriage in question, which is not to be tried now. Judgment *pro Quer*, 170. 77. *Gifford* and *Perkins*.

Traverse.

A. brought Action against *Julian Goddard* : Feme Sole, where the Parties are at issue, and a *Scire fac* is awarded ; and before the return of it, she takes to husband one *Dogly* ; and after upon special Verdict found in the said Suit, Judgment was given in *Banco pro præd* *Juliana* against the said *A.* Upon which Judgment, *A.* brought a Writ of Error in *B. R.* and a *Scire fac* is awarded against *Julian Goddard* as a Feme Sole ; and she appears by Attorney as a Feme Sole by assent of the husband, and after the Judgment is reversed, and the Judgment was entered *quod præd* *A. recuperet*, &c.

versus præd^r Julianam, &c. and Costs and Damages taxed. On which Judgment *A.* sues a *Ca. Sa. versus Julian Goddard*; by force of which the Sheriff takes *Julian*, who is called *Doyly*, being the wife of *Doyly*; yet this is lawful, for the wife so long as the Judgment is of effect, is estopped to say that her name is other than *Julian Goddard*; and the Sheriff being a Minister to execute the Judgment, may take advantage of this Estoppel, 1 *Rolls Estoppel. Abr.* 869, 870.

In Account against the husband it is a good Plea to say, that his wife was a common Taverner, and that the Plaintiff delivered the Tonels of Wine (for which the Account is brought) to the wife to sell for him, without the Assent and Accord of the husband, and she sells them accordingly, and delivers the Money to the Plaintiff, 13 *R. 2. Accompt* 30.

In Action brought by Baron and Feme for the Inheritance of the wife; the Parol shall not demur for the Nonage of the husband, because *in jure Uxoris*, *Parol demurs for the Nonage of the wife, or not.* *Dyer* 137.

But in Action of Debt brought against Baron and Feme upon Obligation of the Ancestor of the Feme, the Parol shall demur for the Nonage of the wife, 8 *Ed. 2. Age* 125.

In a *Præcipe quod reddat* against Baron and Feme of Land which the wife had by Descent, the Parol shall demur for the Nonage of the wife, although the husband be of full age, 18 *Ed. 3. 33.*

If a Feme in by Descent be received for default of her husband, the Parol shall demur for her Nonage, though the husband be of full age, 18 *Ed. 3. 33.*

C H A P. XXX.

Issue. Evidence. Trial. Verdict.

Trial of Marriage. Death of the Husband where triable, and how; whether by Proofs or in Pain. If the Baron and Feme shall join in a Challenge. In what Case by the Evidence of the Wife she and her Husband were discharged of a Judgment. Where the Husband shall be a Witness for the Wife or not.

Trial of Marriage. Vide Title Marriage.

Death of the Husband where triable, and how.

IF the Life of the husband be pleaded, (in Dower) and the Demandant saith he is dead; this shall be tried by *Proofs*, and not *per pass*, 8 H. 6. 23.

In Affise against Baron and Feme, if the Feme comes, and alledgeth the Death of the husband in another County; if this be tried *per pass*, it shall be tried where the Death is alledged.

In a Writ of Dower, if the Tenant saith that the husband is in full life at a Place beyond the Seas, (as at *Paris*) this shall be tried by Proofs, 26 Ed. 3. 72. for the County cannot know it.

Trials by
Proofs.

The manner of Trial by Proofs is more particular in *Thorn and Rolf's Case*, *Dyer* 185. a. In Dower the Issue was upon the Life or Death of the husband, and day given to each Party *ad docend' Curiam*, (*viz.*) to the Demandant *de morte viri*, and to the Tenant *de vita* by Proofs, *ut oportet*; and the Demandant *protulit duos Testes de morte*; whereof one was the Brother of the husband, who were sworn and

and examined by *Lennard* second Prothonotary, and their Testimony tended to no full Proof, but by Conjectures and Presumptions, (*viz.*) that the husband departed this Realm *An. 1 Ma.* for Religion, and was a Minister, and for these seven years he had been absent; and Religion now was restored, and he was not returned, and no Merchant of *Germany*; or *English* who travelled those parts, could learn any thing of his Life, nor no Token of it; and therefore they conclude in their Consciences, that they rather think him dead than alive, and these Testimonies were entered *verbatim in Record ante judicium redditum, & nullus Testis ex parte tenentis productus fuit de vita viri*; ideo concessum fuit quod petens recuperet seisinam, &c. Vide Stat. Jac.

In *Ejectione Firme* vers. Baron and Feme. Upon not guilty pleaded, and a *Venire fac'* granted, the Jury find the wife not guilty, and found a special Verdict as to the husband; which special Verdict is after adjudged insufficient by the Court: A *Venire fac' de novo* shall be granted for both, as well for the Feme as for the Baron; and upon this new Writ the wife may be found guilty, because the Record and Issue is intire, and for this their Verdict insufficient in the whole and void, *M. 9 Jac. B. R. Langley and Paine*; and the Clarks said this was their Course to grant a *Venire de novo* for the whole.

Where a Battery is brought against Baron and Feme supposing they beat the Plaintiff, or the Mare of the Plaintiff: And upon not guilty pleaded, it is found that the Woman only made the Battery, and not the Baron. This Verdict is against the Plaintiff, for it now appears that the Plaintiff's Action was false; for the Baron in this Case shall not be joined for Conformity only, and there is a special Writ in the *Regist.* for this purpose, and it is not like a Battery charged upon *J. D.* and *J. S.* for there one may be acquitted, and another found guilty, and good, because

Special Verdict for the Husband adjudged insufficient; a *Venire fac' de novo* shall be granted for both.

Verdict.

cause they are in Law several Trespasses, *1 Brownl. 209. Drury and Dennis.*

The wife may not join Issue without her husband in Information against Baron and Feme, for the Refusancy of the Feme; and in *42 Ed. 3.* she may not plead to Outlawry without her husband, *2 Roll Rep. 90.*

Challenge.

Trespass by Baron and Feme. Defendant pleads not guilty; and the husband only made a Challenge that he was Servant to the Sheriff. *Per Curiam*, The husband and wife should join in the Challenge, although the Cause of Challenge proceeded from the husband only. But after Trial it was aided by the Stat. of *Jeofayles*, and Judgment *pro Quer*, *1 Brownl. 234. Wrigbi's Case.*

Evidence.

Vide 1 Inst.

By the Evidence of the Wife, she and her Husband are discharged of a Judgment

Parris pretended to help a Woman who had little Portion, to a great Fortune; and the day before the Marriage *P.* procures the Woman to come to a Tavern, where he said, for her provision after Marriage, in case the husband would not maintain her, she ought to seal certain Papers; which in truth were Warrant of Attorney and Release of Errors; and he paid to her 100 *l.* before Witnesses, and went into the next Room, and took it back again. *P.* was informed against for a Cheat, for extending the husband's Lands upon this Judgment: And the wife gave this Matter in Evidence, and the Court set aside the Judgment, and principally upon the Evidence of the wife.

Husband admitted to be a Witness.

Mrs. Dormer bought a Child of *Tucky*, and pretended it her own, and false-swearing about it, as *vid. Sid. 377.* and Information of Perjury was brought. Now the husband of *Tucky* may be admitted to prove the Issue whether the Child were feigned, albeit not to prove or excuse his wife's Subornation of the other Defendant *B.* the Midwife in

in this Deception, 2 *Keb.* 403. the King *vers.* *Buck-*
worth.

The first husband was produced at the Trial to And where
prove the first Marriage, but the Court totally refused his Testimony. *Per Curiam*, The Feme cannot be
Evidence against the Baron, nor the Baron against
the Feme in any Case except *Treason*, because it
might occasion implacable Dissention, according to
1 *Inst.* 6. b. and denied the Lord *Audley's* Case to be
Law, *Hutton p.*

A wife cannot be produced as a Witness either for
or against her husband, 1 *Inst.* 6. b.

CHAR

C H A P. XXXI.

Judgment. Execution. Damages.

Where Judgment against Baron and Feme shall bind the Husband surviving, or not. In what Cases a Feme Covert shall be taken in Execution. Writ of Error brought by all for the Coverture of one. The Coverture of a Woman not to be determined by Affidavit. In Action against Baron and Feme, where Judgment shall be quod Capiantur, or not. Where Baron and Feme both ought to be in Misericordia, or not. Baron and Feme in Execution, and the Wife escapes, if Action lies against the Sheriff. Where the Husband shall recover Damages Sole. Judgment that the Baron and Feme shall recover Damages, in what Cases good.

Where Judgment against Baron and Feme shall bind the Husband surviving or not, or the Wife.

Where there is a *Devastavit* returned against Baron and Feme, and the Feme dies, the Husband shall be charged.

DEbt was brought against Baron and Feme upon Obligation made by the Testator of the wife, and Judgment, and *Fieri fac'*, and upon this a *Testat' Fieri fac'*; and upon this a *Devastavit* was returned, and Judgment was for the Plaintiff to recover, and then the wife dies, Error was brought to reverse this Judgment: And upon several Debates it was adjudged that there was not any Error in *redditione judicii*, &c. but that the Baron is liable to this Execution notwithstanding the Death of the wife, *Sid.* 337. *Eyres* and *Coward*, and so resolved in *Mounson* and *Bourne's* Case. If there be a Recovery against Baron and Feme in a *Devastavit*, if the Baron survive the wife he shall be charged; and if the wife survive

survive she shall be charged; so is *Jacobson and Charlton's Case*, 3 *Keb.* 205. In Debt against Baron and Feme Executrix, on Obligation of *M.* to the former husband, and Verdict on *Devastavit* against *Scire fac'* and *Fieri fac'* and Error and Judgment affirmed. The Feme alone was taken in Execution. She shall not be discharged, here being a Verdict of the Waste. And *per Hales*, had the Wasting appeared to be during the Coverture by her, yet she alone might be taken in Execution.

And if the husband dies, the wife shall be discharged in Execution.

If Debt on Bond be brought against Baron and Feme, and Judgment, and then the wife dies, yet the husband shall be charged, *Sid.* 337.

If Baron and Feme obtain a Judgment in Debt in the Right of the wife, and the wife dies, yet the husband shall have Execution upon this Judgment, *Sid.* 337. and not the Administrator of the wife, because the Debt is altered by the Judgment.

In what Cases a Feme Covert shall be taken in Execution, and in what not.

In a *Devastavit*. Vide *Supra*.

The Court discharged a Feme Covert taken in Execution on Judgment, on Demurrer to Coverture pleaded in Abatement after Impar lance. The Court awarded a *Superseas*, no Judgment being entred. *Superseas*. *Devastavit* was made that she was Feme Covert before, 1 *Keb.* 143.

Judgment against the Lady *Prettyman* as Sole, and she was pretended to be married before Judgment, and it was prayed that she might be discharged of the Execution, and a new *Scire fac'*. *Per Curiam*, She might have pleaded this alone upon the *Scire fac'*; but now being taken in Execution, they cannot ease her till Sentence in Spiritual Court for the Marriage: but she might with her husband bring a Writ of Error, and

If Feme Covert be taken in Execution, she shall not be discharged but by Writ of Error.

and assign this for Error. In Trespass against *A. B.* and several others: *A.* being Covert, all brought a Writ of Error, and for it the whole Judgment was reversed, 3 *Keb.* 13. *Marshall* and the Lady *Prettyman*; and the Court will not suffer the husband to release the Error.

Coverture or not, not to be determined on *Affidavit*.

In *Hunfry* and *Sanders's* Case Counsel prayed, that a Feme Covert, the Defendant, might be discharged on *Affidavit* that at the time of the Bond which she entered into as Feme Sole, she was Feme Covert; *Sed non allocatur*; this being for Rent of an House taken by her as Sole. And in the Lady *Prettyman's* Case the Court did not determine it by *Affidavit*, 3 *Keb.* 382.

The Defendant Feme Covert prayed to be discharged of a *Cap' Excom'* returned in *B. R.* for Nonpayment of Costs on Libel against her for Incontinence, being not within 5 *El. cap.* 23. *sect.* 12. which the Court agreed, and the *Capias* discharged: Some conceived it was not avoidable but by Plea, 3 *Keb.* 836. *Dom. Rex & Coates.*

Judgment against Baron and Feme where the Baron was acquitted, ought not to be against a Feme Covert by *Stat. W. 2. c. 35. Cro. Jac.* 417. *Dr. Halsey* and *Moor*.

If the Feme die after a Verdict, no Judgment can be given against the Husband.

If Action be brought against Baron and Feme, and the Feme die, though it were after a Verdict, yet no Judgment can be given against the Baron, *Hob.* 129. It was the Case of *Cowley* and his wife against *Paulson* and his wife, for scandalous words by one of the Women against the other Woman: And after a Verdict the Court was informed that one of the Women was dead; whereupon Judgment was stayed, *Hob.* 129.

Action vers. Baron and Feme where the Judgment shall be capiatur, or not.

In Debt upon Bond against Baron and Feme for the Obligation of the wife before Coverture: On *non est factum* pleaded it's found against them, both shall be imprisoned, for the husband is guilty of the Fauxing in denial of the Deed, which is the cause of the Imprisonment as well as the wife, 1 *Rolls Abr.* 221. 15 *Jac. B.R. Wood and Sutcliff*, and *Hill. 37 El. in Camera Scaccarii, Say and Bardoise*, 1 *Rolls Abr.* 221.

But in Trespass against Baron and Feme if the wife be found guilty, and the husband not guilty, the husband shall not be imprisoned, 22 *Aff.* 87. but that seems not to be Law, for in *Wood and Sutcliff's Case*, 15 *Jac. B. R. and Trin. 4 Jac. B. R. White and Wylly's Case*, Action of Battery was brought against Baron and Feme, and the Baron found not guilty, and the wife guilty, and the Judgment was given *quod capiantur*, as well the Baron as the Feme, for that the Baron is Party to the Action, and ought to pay the Fine of the wife, P. 11 *Car. B. R. Mayow and Ashfoot*, and *Cro. Car.* 405. 1 *Rolls Abr.* 221. So was in *Ejectment* against Baron and Feme, and the Defendants pleaded not guilty; the wife was found guilty, and the Baron not guilty, and the Judgment was *quod capiantur*, and good; for it is only for Fine to the King, and the Imprisonment is no longer than the Fine is paid.

But in Trespass of Assault and Battery against Baron and Feme for a Battery done by the wife, the Defendant being found guilty *per Cur'*, a *Capiatur* shall be against the husband only, although the Wrong only done by the wife, *Cro. Car.* 513. *Awagn's Case*.

Where Baron
and Feme
must be both
in *misericordia*.

Trover and Conversion against Baron and Feme, and the Baron being requested to deliver the Goods with his wife, refused, and the wife alone is in *misericordia*; it is erroneous, the Baron and Feme ought to have been in *misericordia*. *Vide* the late Statute of Car. 2. 3 *Bulst.* 151. *Wood* and his wife against *Dr. Sutcliff*.

Escape.

Dr. S. recovered in Trover against Baron and Feme, had Judgment against them, and both taken in Execution, the wife escap'd, Debt lies against the Sheriff, 2 *Bulst.* 320. *Dr. Sutcliff* and *Sir Geo. Reynell*. For the wife was in Execution, and a Wrong was done by the Sheriff, and the Imprisonment is several, and so the Escape is several, 1 *Rolls Abr.* 215.

In *misericordia*.

In Trover and Conversion against Baron and Feme for the Conversion of the wife during the Coverture, if the wife be found guilty, and the Baron not guilty, yet both shall be in *misericordia*, for the Amercement is not for the Conversion, but for the delay of Suit, and not rendering the first day, of which the Baron is as well guilty as the wife, 1 *Rolls Abr.* 315.

Judgment against Baron and Feme where the husband was acquitted, ought not to be given against a Feme Covert by *Stat. West.* 2. c. 35. in Ravishment of Ward, *Cro. Jac.* 413. *Hussey* and *Mere*.

Action on the Case against Baron and Feme for scandalous Words spoken by the wife, and Judgment is given against them both; as well the husband as the wife shall be amerced, *Hob.* *Scaef* and *Nelson*.

Action of Case against *W.* and his wife for Words spoken by the wife. The Defendants plead, *Quod ipsi non sunt inde culpabiles*. The Plaintiff shall have Judgment; for the Plea of the husband is void, and so good for the wife, 1 *Rolls Rep.* 216. *Carpenter* versus *Welsh* and *Saffene*.

Costs. Damages.

In Trespass by Baron and Feme for Imprisoning the wife until a Fine paid; for all the Trespass except the Fine they shall recover Damages in Common, 11 H. 4. 16. b. but for the Fine the husband shall recover Damages sole, because it was his Chattel.

In *Assise* by Baron and Feme, if it be found they were disseised they shall recover Damages of the Lises in Common, 11 H. 4. 16. b. but if it be found that certain Goods of the husband were taken upon the Land, the husband sole shall have Judgment of the Damages for them, 11 H. 4. 17. adjudged.

If Baron be possessed of a Term in the Right of the wife, and Damages are recovered against him, the Damages shall not affect the Term of the wife after the Death of the husband, in regard she came in by day, of amount; *aliter* if an Extent be upon it, or upon Recognizance in the Life of the husband, 9 H.

If Baron and Feme join in an Action, and a verdict is given for the Plaintiffs, and the Jury gives Damages *ultra misas & custagias per ipsum* (which is the husband) *circa sectam suam exposita* so much, and *pro misis & custagiis illis* to so much. And upon this Judgment is given, That the husband and wife shall recover the Costs and Damages; although it is found that the husband only expended and disbursed the Money for the Costs and Suit, for as much as the wife had nothing; yet Judgment is good that the Baron and Feme shall recover the Costs, for there may not be one Judgment for the Costs, and another for the Damages, 1 Rolls Abr. 516. *Confee* and *Berree*.

CHAP.

C H A P. XXXII.

Of Divorce.

The nature of a Divorce. What are good Causes of Divorce. The several kinds of Divorces. What Divorces declare the Marriage void ab initio. Of the Divorce causa præcontractus. Causa frigiditatis, causa affinitatis Consanguinitatis, and several Causes of each for Illustration. Of a Divorce a Mensa & Thoro, and the Consequences thereof. What mean Acts done by the Husband shall stand good or not, notwithstanding the Divorce. Of Suits and Actions after the Divorce. Where and in what Cases notwithstanding a Divorce, the Wife shall be endowed or not. Pleasings and Trial. What Divorce shall Bastardise the Issue, or not.

A Divorce is where the Espousals were lawful, according to the Maxim, *Ubi nullus habuit ibi nulla potentia*. So if a Man marry a second wife, the first living, there needs no Divorce in regard it is void, *ab initio*, by Law: For you must know by our Common Law the Espousals in the Church be so strong, they cannot be defeated without a Divorce, and without giving notice in Convention; and if they die before such Convention, the Issue shall never be a Bastard, in as much as the Espousals were not void but voidable; and in all Cases where the Espousals are voidable, it behoves that the Party be convened before Separation, or otherwise the Espousals continue lawful, and the Issue is Legitimate, *Mor* 171.

What are good Causes of Divorce, and of the several kinds of Divorce.

Formerly some Matters were Causes of Divorce, which are not so now : As

1 & 2 P. & Mary, c. 8. A Divorce *propter Impedimentum publicæ honestatis & justitiæ.*

Causa Comparentitatis or *Commarentitatis*, (God-father or Godmother) which in the Act of 1 & 2 P. & M. c. 8. are called *cognatio Spiritualis, causa Professionis*. Observe, if a Deacon or Secular Priest had taken wife the Marriage was not void, but voidable, *causa Professionis*; and if either Party had died before Divorce, the Marriage had been Legitimate, and should have inherited, for that Deacons and Priests within England were not Votaries, (*viz.*) had not vowed Chastity; but if a Monk or Nun had married before the Stat. 52 H. 8. c. 38. and of 2 Ed. 6. c. 21. the Marriage had been merely void.

Causa cognationis Legalis, (*viz.*) *Adoption*.

These are all taken away.

In our Books the Division $\left\{ \begin{array}{l} \text{a Vinculo Matrimonii.} \\ \text{is Common of Divorces, } \left\{ \begin{array}{l} \text{a Mensa & Thoro.} \end{array} \right. \end{array} \right.$

Those Divorces which dissolve the *Vinculum Matrimonii*, are

Causa Præcontractus.

Causa Frigiditatis: Where the Party hath *perpetuum impotentiam*.

Causa Affinitatis or *Consanguinitatis*.

Causa Sævitiæ sive Metus.

Z

These

These Divorces declare the Marriage void *ab initio*, and declare the Issue a Bastard.

Something I shall say of each of these, and the Consequences thereupon.

Causa Praecontractus.

By Divorce *Causa Praecontractus*, the first Baron and Feme are compleat Baron and Femewithout other Solemnity.

By the Divorce *Causa Praecontractus*, as I said, there is a Nullity of the Marriage, and the Children are meer Bastards, 2 *Inst.* 93. by the Divorce *causa pracontractus* the first Parties are compleat Baron and Feme.* It was Sir Robert Paine's Case, *Sid.* 13. If a Man contract with a Woman to marry her, and after he marries another Woman, the first Woman sues in the Spiritual Court, and it is by Sentence adjudged that the Man and first Woman are Baron and Feme; by this Sentence the first Man and Woman are compleat Baron and Feme without any other Solemnity, *quod Twisden negavit*; and said the Marriage ought to be solemnized before they can be compleat Baron and Feme: And Noy in his Lent reading *An.* 1632. held, that if the wife be divorced from her husband *causa pracontractus*, made with another by *verba de presenti*, that in this case immediately by Sentence given in Court, the Marriage shall be consummate between the Woman and her first husband, without any Rites *in facie Ecclesiae*; aliter upon Contract by *verba de futuro*, *Dyer* 105. *h.* in margin.

Two were precontracted, one after is espoused to a Stranger, and after sued in the Spiritual Court, and Sentence is there given that they shall marry according to the Precontract, and she marries; this is good without Divorce or Consent of the husband, and their Issue is not a Bastard, *Moor* 169. *Bunting's* Case.

Causa

Causa frigiditatis: Where a Man hath *perpetuam impotentiam generationis*.

It hath been a great Question, if the Parties divorced intermarry severally with others, and have Issue severally, whether the second Marriage is void, and whether their Issues are Bastards? My Lord Dyer cites one *Bury's Case*, fol. 179. a. Sentence against *Bury*, *Causa frigiditatis naturalis ad secundam Uxoris sue*; and the wife was married to *Cary*, by whom he had Issue, and she gave all her Inheritance to *Cary* her second husband; and *Bury* was married to another Woman, by whom he had Issue: And in this Case the Opinion of the Doctors was, that then the Persons shall be compelled to cohabit together as Man and wife, *Eo quod Sancta Ecclesia decepta fuit in priori judicio*. *Harrison* in his Lent Reading cites a Case to be adjudged *Hill. 37 El. Stafford and Money*. Feme sues a Divorce for Frigidity, and after the husband marries another wife, by whom he had Issue, and adjudged that the second Marriage is void; and the Civilians gave the Rule, *Qui aptus est ad unam uxorem est ad aliam, & quando potentia reducitur ad actum debet redire ad primas nuptias*. *Impotentia & frigiditas, quoad hanc est causa sufficient divorce quousque explorationem, & Trial pro tres annis & autem, Ceremonies*, enjoined by Canons, and the second Marriage of both is good notwithstanding that the Party impotent have Children. *Vid. Moor 225.2 Leon. 169, 170, 171, 172.*

In *Berry's Case* the first Judgment was given upon a Libel, which was that he was *frigidus*, and the Sentence was accordingly; but no mention whether *maleficiatus*, or not *quoad hanc* only, or *frigidus a natura*; but because that after he took a second wife, and had Issue by her, a great Question was whether he shall be intended *maleficiatus quoad hanc*, or not? for the Proofs of the first Sentence tend to prove a per-

If the Parties divorced *Causa Impotentia* intermarry others, and have Issue, whether the Issues are Bastards.

petual Frigidity, and upon a special Verdict all this appearing, the first Sentence was intended to be true,
1 *Rolls Abr.* 212.

Causa Affinitatis, Consanguinitatis. Vide Supra tit. Bastard.

Causa Sævitie five Metus.

Causa Sævitie. If the husband take from his wife Apparel, and other Necessaries, this is a good Ground to sue a Divorce *Causa Sævitie*.

If one of them be in Dread of the other for poisoning, it is a good Ground for Separation by Sentence.

Causa Adulterii. Divorce *a Mensa & Thoro*, or *Causa Adulterii*: This doth not dissolve the Marriage, for it is subsequent to the Marriage as the others are precedent. And in case of Divorce *Causa Adulterii*, the Coverture continues between them: If the husband after such Divorce release an Obligation, or any other Duty due to the wife before Coverture, it hath been held a good Release; which proves that the Marriage continues, and the wife after such Divorce shall have Dower of her husband's Lands, which proves that the Espousals continue. And therefore in *Littleton's Case*, *Sec. 380.* a Lease is made to the husband and wife, To have and to hold to them during the Coverture between them; in this case they have an Estate for their two Lives, upon condition, (*viz.*) if one of them die, or that there be a Divorce between them, then it shall be lawful for the Lessor and his Heirs to enter. *Littleton* here speaketh of such Divorce as dissolves the Marriage *a Vinculo Matrimonii*; for though the husband and wife are divorced *Causa Adulterii*, yet the Freehold continueth because the Coverture continueth.

Yet the Espousals continue.

The Law of Husbands and Wives.

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If a Woman be divorced *a Mensa & Thoro*, she must sue by her next Friend, as was Lady Rosse's Case; *aliter* if she is divorced *a Vinculo Matrimonii*: As if a Man marries a second wife, the first living, the second wife may sue by the name when she was Sole, for that the second Marriage is void *ab initio*.

How a woman divorced *a Mensa & Thoro* shall sue.

What mean Acts done by the Baron shall stand good or not, notwithstanding the Divorce.

Where Baron and Feme are divorced, where she is an Inheritrix: Mean Acts executed shall not be reversed by the Divorce, as Receipt of Rent, Waste, Presentment to a Benefice, Gift of the Goods of the wife; contrary of Inheritances, if the husband had discontinued or charged the Land.

He may release an Obligation due to the wife before Coverture, after a Divorce *a Mensa & Thoro*; so of a Legacy, as was the Case of *Stephens and Totty*. F.T. was divorced from the husband *Causa Adultærii* in the husband; the wife sued *Stephens* in the Spiritual Court for a Legacy given to her by a Stranger, and he pleaded the Release made by the husband after the Divorce. *Per Curiam*, This Divorce is not a *dissolutio a Vinculo Matrimonii*; so as that any of them may marry again, but it is a Separation only, and they be not compellable to cohabit; but if they will they may, without any new marrying. And in regard this Separation does not avoid the Marriage absolutely, but they still remain Man and wife, the Release to the husband was good to extinguish the Duty. And the Books which speak that the Feme shall have her Goods after Divorce, are to be intended of an absolute Divorce *ab initio*, *Cra. EL. 908.*

If a Feme *post annos nobiles*, (*viz.*) at 12 years contract Matrimony with *A.* and after marry with *B.* and after that she have passed the age of 16 years,

Where the
Wife shall
have the
Goods again.

her Marriage with *B.* is dissolved, *Causa Pracontractus*; by this Divorce there is a Nullity of the Marriage *ab initio*; and if she had any Goods or Personal Estate, she ought to have the same again, for *cessante causa cessat Effectus*. But if he had given or sold them before without Collusion, then there had been no remedy; but if it were by Collusion, then the wife might have averred the Collusion, and she may have the Goods, whereof the Property may be known either by Detinue, or in *Chancery*; and the rest that lay in Money, and the like, she may sue for by the Spiritual Law, or in *Chancery*: And the Reason, in *Dyer* 13. *a.* why she shall have her Goods again is, because the Cause and Consideration of the Gift of them in Marriage, is now defeated, for the Goods were given in Advancement of her Marriage.

If the husband aliens the Land of the wife, and after they are divorced *causa Pracontractus*, or any other Cause which dissolves a *Vinculo*; the wife during the Life of the Baron may enter by the Stat. 32 *H. 8. c. 28.*

If Baron and Feme purchase jointly, and are dissolved, the Baron releaseth, and after they are divorced, the Feme shall have a Moiety, albeit there were not Moieties before the Divorce, for the Divorce converted it into Moities.

Of Suits after Divorce. Vide Actions.

If a Man be obliged to a Feme Sole, and after she marry him, and after she is divorced; she may have an Action afterwards which by the Marriage was suspended.

Feme sues
again.

If Baron and Feme are divorced *Causa Adulterii*, and after the Feme sues without the husband for a Defamation; although the Divorce dissolve not the Marriage,

Marriage, yet in regard the Feme by the Course of the Civil Law may sue alone, in such a Case a Prohibition hath been denied.

Where and in what Cases, notwithstanding a Divorce, the Wife shall be endowed, or not.

If Baron and Feme are divorced, a *Vinculo Matrimonii*, Dower ceaseth, but not if it be only a *Mensa & Thoro*, 1 *Inst.* 32. a.

If a Marriage *de facto* be voidable by Divorce in respect of Consanguinity, Affinity, Precontract, or the like, whereby the Marriage might have been dissolved, and the Parties freed a *Vinculo Matrimonii*; yet if the husband die before any Divorce, there now because it cannot be avoided, this wife *de facto* shall be endowed, for this is *Legitimum Matrimonium quoad dotem*, 1 *Inst.* 33. a.

A Woman Copyholder for Life according to the Custom of the Manor, *durante viduitate*, takes *J. S.* to husband, she being Niece to a former wife of *J. S.* upon which *J. S.* is questioned for an Incestuous Marriage, and does Penance, and is bound not to keep her company; and after *J. S.* dies, this Marriage does not determine her Estate, for she was not divorced a *Vinculo Matrimonii*, though there was cause for it, *Hob. Remington's Case*.

Pleading.

In Pleading of a Divorce the Judges *coram quo*, must be precisely pleaded, 2 *Leon.* p. 170, 171.

Trial.

Divorce shall be tried by the Bishop, and not *per Pais*, 7 *H.* 4. 23. 19 *H.* 6. 18.

Z 4

What

What Divorce shall Bastardise the Issue, or not.

It appears before that such Divorces which dissolve *Vinculum Matrimonii*, shall Bastardise the Issue, if they are executed during the Lives of the Parties, otherwise not; and the Issue may not be made a Bastard after their Death: For the Divorce in the Spiritual Court is *pro peccatis*, which cannot be after their death; and they cannot disinherit an Issue there.

If *A.* takes *B.* to wife within age of consent, and after at the age of consent they dissent, and marry elsewhere, and have Issue and die, it cannot be examined in the Spiritual Court after, whether they consented at the age of consent before their dissent, because they cannot Bastardise the Issue after their death; *Englefeild's Case*; and a Prohibition granted out of Chancery upon it.

And it's a general Rule, that after their death the Spiritual Court cannot examine any Matter to Bastardise the Issue. If two are divorced for *Consanguinity*, if they were ignorant of the Consanguinity, the Issue shall be Legitimate, 1 *Rolls Rep.* 212.

C H A P. XXXIII.

Offences against the Statutes concerning Women.

Action on the Statute of 5 Eliz. c. 9. against the Husband and Wife for the Wife's not appearing ad Testificandum, and the Declaration of Polygamy against Stat. 1 Jac. c. 11. Of stealing Women, &c. Construction of the said Statute, and of the Stat. 39 Eliz. c. 8. Of Rape. Baron and Feme indicted of Perjury. Information against a Feme Covert for Selling Fish. In all Statutes which provide for actual Wrong, Femes Coverts shall be intended within them.

H. Brought an Action *sur Stat. 5 El. c. 9.* against Upon the Stat. 5 El. c. 9. for not appearing ad Testificandum, H. and his wife for the Penalty of 10*l.* given by the said Statute against him, who was served with Process *ad Testificandum, &c.* and doth not appear, not having any Impediment, &c. And shewed that Process was served upon the Defendant's wife, and sufficient Charges, having regard to her Degree and Distance of the Place, &c. tendered to her, and yet she did not appear. Verdict *pro Quer.* Moved in Arrest of Judgment: 1. Because the Plaintiff in setting forth he was damaged for the not appearance of the wife, and has not shewed how damnified. *Respond.* Though the Party be not at all damnified, yet the Penalty is forfeited. 2. A Feme Covert is not within the said Statute, for no mention is made of a Feme Covert. *Respond.* Femes Coverts are within the said Statute, otherwise it would be a grand Mischief, for she may be the only Witness. 3. The Declaration is, That the Plaintiff tendered the Charges to the wife, where he ought to have tendered the same to

to the husband. *Respond'*. The wife ought to appear, and therefore the Tender ought to be to her: And Judgment *pro Quer'*, 1 Leon. 122. *Harvillam* and *Harvey*, *Mesme Case*, Cro. El. 130.

Polygamy.

Per Stat. 1 Jac. c. 11. If any Person or Persons within his Majesty's Dominions of *England* and *Wales*, being married, do marry any Person or Persons, the former wife being alive, that then every such Offence shall be Felony, and the Person and Persons so offending, shall suffer death, as in Cases of Felony. But this Act shall not extend to husband or wife, being absent seven years from the other beyond the Seas. Nor shall it extend to any Person divorced at the time of such Marriage in the Spiritual Court, nor to Marriage within the age of Consent.

As to a Woman being divorced, and then marrying again. It was one *Porter's Case*: R. was lawfully espoused to one *Porter*, and had sued a Divorce *propter Severitatem*, and it was *Separamus a Mensa & Thoro*, but no word of *Divorciamus*. By the better Opinion she is within the *Proviso*, and that it was not Felony; but it appeared by the Canons that such Persons as are divorced *a Mensa & Thoro*, may not marry again; and it was clearly agreed by the Civilians, that the second Marriage was unlawful, and that she might be in danger of the Statute; but it was not adjudged there: But in my Lord *Rosse's Case* it was the Opinion, that they might marry again, Cro. Car. 461. *Porter's Case*.

One *Williams* was indicted at *Bristol* upon the Stat. 1 Jac. 11. for having two Wives, and upon not guilty, a special Verdict was found that the said *Williams* married one wife, and was afterwards divorced from her *Causa Adulterii*, and afterwards married

ried the other; and if that were within the *Proviso* of that Stat. which provides for those who are divorced, was the Question. And it was resolved without Argument by *Bramstone* Chief Justice, and *Heath*, (*ceteris absentibus*) that it is within the *Proviso*, for the Statute speaks generally of Divorces, and it is a Penal Law: And *Heath* said that by the Law of Holy Church the Parties divorced *Causa Adulterii*, might marry; and he cited *Porter's Case*, who was divorced *Causa Sævitia*, and said it was resolved that that was not within the *Proviso*, because only a Divorce *a Cohabitatione*, and a Temporal Separation till the Anger past. But here it is a *Vinculo Matrimonii*, (in which last he was much mistaken) *March Rep. 101.*

One was indicted of Felony upon the Stat. 1 Jac. c. 11. for having of two Wives; and the Evidence was, that he espoused one beyond the Seas, and another here; and the Court was of opinion that he was not within the Statute. *Quære*, If the second Espousals were beyond the Seas, for that makes the Offence, and cannot here be tried, *Sid. 171.*

Counsel on 1 Jac. c. 11. prayed stay of Process upon the Recognizance of the Prosecutor, who was bound over by Judge *Archer*, Judge of Assize in *Cornwall*, to prosecute the Defendant for having two Wives; in regard he being taken in *Cornwall*, must be tried there, and that therefore it might be saved. But *per Curiam*, This being an Affirmative Statute, doth not take away the Trial by the Common Law where the Offence was committed, and agreed to save the Recognizance, *Pengell* and Dr. *Easton's Case*, 1 *Keb. 31.*

Of

Of Stealing Wives.

Information was exhibited in the name of Sir *Th. Fanshaw* (Clerk of the Crown, and so to this purpose, Attorney for the King) against *T.* and others, for taking and marrying the sole Daughter and his apparent of *T. of Kent*, without the Assent, and against the Will of the Father; and this was an Information for Offence at Common Law: And the Evidence was, That *T.* was oftentimes at her Father's House, and in her Company; and there he secretly contracts himself to his Daughter, she being fifteen years of Age; and by Appointment between him and his Daughter, his Daughter left her Father's House, and met *T.* who came with Horses from *London* to *Kent*, and brought the Daughter to *London*, and they were married. And upon the Evidence the Jury at the Bar found them guilty. The Cause being prosecuted by the Father and Mother, who gave Evidence against them, they prayed the Fine might be moderated, and were discharged out of Prison upon Bail. And all that this was an Offence punishable by Fine and Imprisonment at Common Law, *Sid.* 387. the King against *Twissleton*; and the Statutes 4 & 5 P. & M. & 3 H. 7. c. were but Aggravation of Punishment, and do not create any Offence originally, 2 *Keb.* 432.

Offences against Penal Laws.

In the time of K. *Charles 1.* the Lady *Fullwood*, *Roger Fullwood*, and divers others, were indicted in the County of *Surrey*, That whereas *Sarah Cock* was a Maid who had a Portion of 1300 *l.* the said *Roger* by Procurement of the Lady, at the Parish of *St. Savinus*, violently, and with force, and against the Will of the said *Sarah*, took and carried the said *Sarah* to *St. for*

viowis

vivors, and there married her against the form of the Statute. They plead not guilty. The said Roger Fullwood, R. B. and J. H. were indicted in the County of Middlesex, *de eo quod*, the said Sarah having a Portion of 1300 *l.* For Lucre of the gain of the said Portion, they took her at N. in Com. Midd^s against her Will, and carried her to St. Saviours in Surrey, and there the said Roger married the said Sarah *contra formam Statuti*; and a Copy of the Indictment in Midd^s was allowed them. It was in the Case agreed, That the taking of a Woman unless she be married or defiled, is not Felony, within the Statute; and if the taking of such a Woman, and the marrying or defiling be in several Counties, it is Felony compounded of all the three parts, as Stroke and Death are but one Murther. *Per Curiam*, Although it had been objected, That it was an Obsolete Statute, yet they were deceived, for the Statute is good, and of good use; but many had not been executed thereupon, because they had their Clergy: For the taking whereof away, the Statute 39 *El. c. 8.* was made. And whereas it was pretended, that Sarah was married with her Consent, and therefore not within the Statute; the Court said, That the taking being unlawful, and against her Will, though the Marriage was with her Will, yet it is Felony within the Statute: And although this was not a Marriage *de jure*, because she was in such fear that she knew not what she answered or did; yet it is a Marriage *de facto*, and is Felony within the Statute, and Judgment was given that they should be hanged.

31 H. 8. Rot. 14. *inter placita Regis*: Henry Sturges and Phillip Sturges were indicted for taking one Agnes Hobson against her Will, who was the Daughter and Heir of John Hobson, who was seised of Lands to 20 *l. per Annum* Value. And they pleaded to the Indictment, that they ought not to answer *pro eo quod non mentionatur*, in the said Indictment, *quod ceperunt*

ceperunt ad intentionem maritandi dictam Agnetem vel ad prostituendam, &c. and they were discharged.

Hill. 3 & 4 P. & M. Rot. 10. Roger Tompson and Peter Rewley were indicted *pro eo quod Felamini ceperunt Margaretam Burton & Margeream Burton*, Daughters and Coheirs of Roger Burton deceased, and against their Wills, &c. and they pleaded they ought not to answer to the said Indictment, *pro eo quod non apparet in quo loco nec quomodo*, they took the said Daughters, and *pro eo quod non mentionatur in dicto indictmento*, that the said Roger or Peter married or defiled the said Margaret or Margery, *ils alerns sans jour*.

Though the words in the Purview of the Statute of P. and M. seem to be general, and to extend to all Women unlawfully taken against their Wills; yet considering that the Preamble of the Statute cannot be conceived to be idle, it must be intended to restrain the purview to the particular Cases in the Preamble mentioned, (*viz.*) that they shall be Maids, Widows or Wives, their Substance in Lands or Goods, or otherwise Heirs apparent, that the Motive be Lucre, and the End to be married or defiled, and the Purview is what Person or Persons should steal away a Woman (so) against her Will unlawfully: This word (so) did bind up the Preamble to the Purview, *Cri. Car.* 484, 488, 492.

In *Fullwood's Case* divers Witnessees proved that she was willing to marry him, and appointed a Taylor to make her a Gown, and was found in Bed with him: But she made Oath that she did it for fear of his Threats, and that she knew not what she did. It was not expressed in the Indictment that they took her *ea intentione* to marry or defile her, as in the Case of 31 H. 8. but the Court resolved it was good; for in regard it appears apparently by the Indictment, that they took her & *abduxerunt* for Lucre, and the same day married her, that shews the Caption to be within

Stat. P. & M.
Explained.

with an Intent to marry her, and there be no such words in the Statute as *ea intentione*.

Information for *Recusancy*. Vide *Supra*, tit. *Information*.

A. steals his wife against her Friends Consent, and after sues in Equity for her Portion, but denied Relief by Egerton Chancellor, and said, *He that steals the Flesh let him provide Bread how he can*, he shall have no relief in Equity.

Note, By the express Purview of this Statute the Accessary or both, before and after are made Principals, as the Receivers of the Woman, 12 Co. 20, 21.

Feme Coverts Keepers of Gaols, shall be chargeable in Debt for the Escape of a Prisoner, 2 Inst. 382. and 6 *Infants*.

Rape.

A Man of 60 years of age who had a wife was arraigned at *Newgate*, 22 Jac. of the Rape of a Girl then of the age of 7 years and no more, by the apparent Evidence of divers Women, and the Surgeon, and the Damsel her self, and he was hanged, *Dyer* 304. in *Margin*.

Perjury.

Baron and Feme convicted of Perjury, she only was taken; and Counsel prayed that she might stay till the Baron comes in to receive Judgment together; which the Court denied, and the Indictment was joint, which was well enough: So of the Issue joint-taken, 1 *Keb.* 585. the King and *Chedwick*.

Information was brought against a Feme Covert for Selling Fish. *Twisden*, notwithstanding *Hob.* *Moor* and *Hussey's Case*, conceived this lay not against her, but against the husband alone, 11 Co. 64. being

being his Contract, to which the Court inclined,
2 *Keb.* 634. the King against *Jorden*.

M. 24 *Car.* 2. *B. R.* The King against *Storey* :
The Court fined him 100 *£* and Goodbehaviour for 5
years on Information for deceitful taking away out of
her Mother's Custody Mrs. *Gilburne*, under 16 years
old, with intent to marry her, and well ; *Geery* 50 *£*.
and Goodhaviour for a year ; *Lentball* 40 Marks ;
who were Women guilty of the Exploit, and found
guilty only of the Deceit, 3 *Keb.* 101.

For all Statutes which provide for actual Wrong, a
Feme Covert shall be intended within them, 9 *H. 6.*
If a Feme Covert make actual Disseisin with force,
she shall be imprisoned, 9 *H.* 4. 7. *b.*

Precedents.

Der super Obligac^o fact^o al Ferne sole & alter uxoz
B. V. & Vir dissentit ab obligation^e & alter Ob-
ligor prosequitur Actionem.

P Alsch. 28 Eliz. Rot. 112. ff. 3. B: sum-
monit fuit ad respondens Susan C.
de placito qd reddat ei 40 l. quas ei
debet & injuste detinet &c. Et unde
die quod cum poict J. (tali die & anno) apud
L. per quoddam scriptum suum obligatorium con-
cessit se teneri eis D. & cuidam P. ad tunc ux-
or B. W. in pres 40 l. solvens eidem D. & P.
(tali festo) tunc p^{ro}x. sequend^o predictus B.
post confessionem scripti pres & ante diem impe-
trationis h^{ab}ebis originalis ipsius D. habens no-
ticiam qd poict J. per idem scriptum tenebatur
obligatus eidem D. & p^{ro}x. D. ad tunc & ad
uxor ipsius B. in pres 40 l. scripto illo
ad huiusmodi noticiam & ante diem impetra-
tionis h^{ab}ebis originalis ipsius D. scilicet (tali die
& anno) apud A. pres dissentit & scriptum illud
recusat ut fact^o pres D. acceptare penitus recusa-
vit predictus tamen J. licet sepius requisit^o poict
idem 40 l. eidem D. & P. ante poict recusa-
vit poict B. seu eidem D. post reculationem
idem B. non reddidit sed ill^o &c.

A a

Pach.

Pasch. 33 Eliz. Rot. 1940.

Brownloe Hertff. Gabriel Child & Agnes la Feme
que la Feme Thomae Henerey Demand' versu
Eliz. Connyesby Vid' & Henry Hendry la Feme
part de deux meases cum pertind in R. come si
Dower del endowment de dit T. J. son Ba-
ron &c.

Barr. Quod
quondam vir,
&c. concessit
annualem red-
ditum 20 l.
petent. in sa-
tisfactione do-
tis ipsam con-
tingen'.

Et Pdict Eliz. & Henricus per J. B. Accoma-
tum suum veni & dicunt qd p'ed Gabriel & Ag-
nes vorem ipsius Agnetis de tenementis p'ed
cum pertind unde qd. ex dotatione p'dict R. qua-
dam vici sui habere non debent quia dicunt qd
p'dict F. in vita sua fuit seisit de tenementis p-
dict cum p'ed in dominio suo ut de lego &
tenementa illa cum p'ed tenuit de Henric R.
p'p' ut de p'p'ertio suo de D. in Corn p'ed
p'et. per servitium militare que quidem te-
namenta cum p'ed sunt & tempore mortis p-
dict R. fuer' clari anni valoris ultra man-
omnia & repp'as 12 l. p'dict R. sic de te-
nementis p'ed cum p'ed in forma p'dict fuit
existen' apud R. p'ed dixit in uxorem p'ed Ag-
netem & post dispensalia inter eorundem R. & Ag-
netem celebrat scilicet (tal die & anno) apud R.
p'dict condidit voluntatem suam in scriptis &
eandem voluntatem suam voluit & legavit p'ed
Agneti tunc uxor' ejus quendam annualem red-
ditum 20 l. ex eund qd. percipiens de omnibus
terris & tenementis ipsius R. in Parochia de R.
& R. p'dict ad duos anni terminos per equa-
les portiones solvens prima solutione inde re-
cipiens ad finem sex mensium p'p' post decem
sum ejusdem R. & sic quolibet dimidii anni vo-
rante vita naturali ejusdem Agnetis in plenam
satisfactionem totius dotis ipsius Agnetis ipsam

de terris & tenementis ipsius T. contingend Et
postea apud R. p[re]s obijt de terris & tenementis
p[re]s cum p[er]tin[entia] in forma p[re]s scilicet post cuius
mortem & ante impetrationem h[er]edis p[re]s scilicet
(tali die & anno) p[re]s Agnes apud R. p[re]s dum
ipsa sola fuit p[re]s annualem redditum 20 l. in
plenam satisfactionem totius dotis ipsius Agnetis
de tenementis p[re]s cum p[er]tin[entia] contingend accep-
tate agreebat. Et hoc parat est verificare unde
p[re]s iudicium. Et p[re]dict Gabriel & Agnes d[omi]ni
ipsius Agnetis de tenementis p[re]dict cum p[er]tin[entia]
unde &c. ex donatione p[re]dict T. quondam b[er]is sui
habere debeant &c.

Glanvil.

Et p[re]dict G. & Agnes dicunt quod ipsi per ali-
que palliat a dote ipsius Agnetis de tenementis
p[re]dict cum p[er]tin[entia] unde &c. habend p[re]dict non de-
bet quia dicunt q[uo]d eadem Agnes dum ipsa sola
fuit non agreebat acceptare p[re]dict annualem red-
ditum 20 l. in plenam satisfactionem dotis to-
tus dotis ipsius Agnetis ipsam Agnetem de te-
namentis p[re]dict cum p[er]tin[entia] contingend p[ro]ut p[re]s
ipsa & Henric superius allegaverunt. Et hoc
est q[uo]d inquiratur per patriam &c. 4 Co. f. 4. Ver-
ton's Case est ad iudice que cessat bar est bon & deus
equity de Stat. del 27 H. 8. de Joyntures.

Repl.
Demandant
dicunt quod
le feme ne a-
gree a pay.

A a 2

Dower.

Dower.

Narratio in Dote.

A Anna que fuit uxor R. D. per A. D. Attornatum suum petit versus Johannem D. certam partem Panetiorum de D. & P. cum p. etiam ac decem Mesuagiorum decem toftorum unagint' ac terre cum p. in C. ut dotem ipsius A. ex donatione p. dicit R. quondam viri sui & unde nihil habet &c.

Plea. Non fuit in legitimo Matrimonio copula
vide supra.

Plea. N'unque seife que Dower.

Et p. dicit J. per . . Attornatum suum dicit & dicit qd p. dicit Anna dotem suam de tenementis p. dicit unde &c. versus eum habere non debet quia dicit qd p. dicit R. D. quondam vir ipsius A. ex cuius dotatione &c. nec die quo ipse R. eundem A. desponsavit nec unquam postea scilicet fuit de tenementis illis cum p. unde &c. & tali statu ita qd eadem A. inde dotasse potuit Et de hoc ponit se super Patriam Et p. dicit A. & insinuat Ideo &c.

Plea 'Acceptation' Annuitatis in satisfactionem
Dotis.

Et p. dicit J. per . . Attornatum suum dicit & dicit qd p. dicit A. dotem suam de tenementis p. dicit cum p. ex dotatione p. dicit J. D. quondam viri sui habere non debet quia dicit qd diu ante tempus impetrationis brevis originalis ipsius A. scilicet (tali die & anno) apud R. p. dicit J. assignavit

ut p[ro]p[ri]a A. annuitatem sive annualem redditum
sex librarum legalis monete Anglie ex[er]cund[um] de
omnibus terris & tenementis p[ro]dict[is] cum p[er]tin[entia]
habens & tenens eidem A. p[ro] tempore vite sue
in nomine dotis sue ex[er]cund[um] de omnibus terris
& tenementis p[ro]dict[is] que fuer[unt] p[ro]dict[is] J. H. quon-
dam v[ir]i sui &c. Quem quidem redditum sex li-
brarum p[ro]dict[is] A. acceptabit in plenam satisfactio-
nem totius dotis sue ipsam de omnibus terris
& tenementis p[ro]dict[is] que fuer[unt] p[ro]dict[is] J. contingen-
t[ur] Et hoc &c. Unde petit Iudicium a p[ro]dict[is] A. do-
tem suam de tenementis p[ro]dict[is] cum p[er]tin[entia] ha-
bere debeat &c.

Et p[ro]dict[is] A. dicit q[uo]d ipsa per aliqua p[re]alle-
gata a dote sua p[ro]dict[is] habens p[re]cludi non de-
bet quia p[ro]testando q[uo]d ipsa non acceptabit p[ro]dict[is]
annuitatem sive annualem redditum sex librarum
legalis monete Anglie in plenam satisfactio-
nem totius dotis sue ipsam de omnibus terris &
tenementis p[ro]dict[is] cum p[er]tin[entia] que fuer[unt] p[ro]dict[is] J. H.
contingent p[ro]ut p[ro]dict[is] J. superius allegabit p[ro]
p[re]s[er]to eadem A. dicit q[uo]d p[ro]dict[is] J. non assignabit
eidem A. p[ro]dict[is] annuitatem sive annualem red-
ditum sex librarum legalis monete Anglie ex[er]cund[um]
de tenementis p[ro]dict[is] cum p[er]tin[entia] habens & tenens
eidem A. p[ro] termino vite sue nomine dotis
de omnibus terris & tenementis p[ro]dict[is] que fuer[unt]
p[ro]dict[is] J. H. quondam v[ir]i sui &c. p[ro]ut idem J.
superius allegabit Et hoc parat est verificare
unde petit Iudicium Et q[uo]d ipsa de tenemen-
tis p[ro]dict[is] cum p[er]tin[entia] docare possit &c.

Repl. Non ac-
ceptavit.

Et p[ro]dict[is] J. ut p[ri]us dicit q[uo]d p[ro]dict[is] J. assigna-
bit p[ro]p[ri]a A. p[ro]dict[is] annuitatem sive annualem
redditum sex librarum ex[er]cund[um] de tenementis p[ro]
dict[is] cum p[er]tin[entia] habens & tenens eidem A. p[ro] ter-
mino vite sue nomine dotis sue de omnibus ter-
ris

ris & tenementis predictis que fuer' predicti J. &
quondam viri sui prout ibidem J. superius allegavit
Et de hoc ponit se super Patriam &c.

Plea. Elopement.

Et predicti A. per . . . Accoznatum suum de-
nit & dicit qd predicti B. dotem suam de tenemen-
tis predicti cum p[ri]m ex dotatione predicti J. habere
non debet quia dicit qd p[ro]p[ri]a B. in vita predicti J. scilicet
(tali die & anno) apud W. in Cornu A.
sponte sua reliquit p[ro]p[ri]a J. virum suum & ab eo
abijt & elopavit cum quodam T. W. & cum ipso
T. W. apud B. in predicti Cornu A. in adulterio
mozam traxit continuam tota vita ipsius J. mi-
nime reconciliat ad p[ro]p[ri]a J. virum suum in vita
ipsorum J. Et hoc &c. Unde &c. si dotem suam
de tenementis predicti cum p[ri]m ex dotatione &c.
in hac parte habere debent &c.

Repl.

Et predicti B. dicit qd ipsa per aliqua p[re]allegavit
de dote sua de eisdem tenementis cum p[ri]m ex
dotatione predicti J. quondam viri sui versus p[ro]p[ri]a
A. habens p[re]cludi non debet quia dicit qd
ipsa in vita predicti J. non reliquit ipsum J. virum
suum nec ab eo abijt cum p[ro]p[ri]a T. W. nec mo-
zam cum ipso in adulterio trahens fecit prout
predicti B. superius allegavit Et hoc petit qd in-
quiritur per Patriam &c.

Bar per acceptance de Jointure cum recitatione
Stat. 27 H. 8.

Et predicti T. W. per . . . Accoznatum suum
denit & dicit qd predicti B. & D. dotem ipsius D. de
tenementis predicti cum p[ri]m unde &c. ex dotatione
p[ro]p[ri]a D. quondam viri &c. habere non debent quia
dicit qd in Beacut in Parlamento Domini Hen-
rici

rici nuper Regis Anglie octavi apud Civitatem
 Londoniensi die Novembrijs anno Regni sui
 vicesimo primo inchoat & ex eadem Civitate usq;
 ad Palatium suum apud Westm in Comu Midd
 & adjuvat & prorogat acque ibidem continuat
 usq; ad & in decimo septimo die D. tunc prior.
 sequen & ad eisdem die & loco per diversas pro-
 rogationes usq; ad & in quartum diem P. anno
 Regni sui vicesimo septimo continuat & prorogat
 inter alia inactis ordinat & stabilit existit au-
 thoritate eiusdem Parliamenti qd cum diverse
 persone perquisivissent sive habuissent statum facti
 & composu de & in diversis terris tenementis &
 hereditamentis sibi ipsis & suis executoribus &
 heredibus viri sive uxoris & uxoris & heredis de
 ipsius ambobus corporibus procreat aut heres
 unus eorum corporum procreat aut marito &
 uxori pro termino suarum vicarum aut pro ter-
 mino vice videt uxoris sue aut ubi aliquis talis
 status sive perquisitio aliquorum terrarum tene-
 mentorum sive hereditamentorum fuit aut ex-
 istet in posterum foret facti alicui marito & ejus
 uxori modo & forma superius express. alicui alle
 persone seu personis heredibus & assignatis suis
 & alium & opus vicorum & uxoris vel ad
 aliam uxoris proit prius memorat existit pro
 penduta uxoris qd extunc quolibet huiusmodi casu
 quolibet mulier nupta habens talem iunguram
 vicam aut extunc in posterum siens non claud
 in haberet aliquem titulum alitius dotis de rebus
 vicarum tenementorum vel hereditamentorum
 seu aliquo tempore fuissent vicari viri sui per
 quem ipsa habuisset aliquam talem iunguram
 nec peteret neq; claud dotem suam de & versus
 eis qui haberent terras & tenementa vicari viri sui
 sed si haberet nullam talem iunguram cum ipsa
 nec admisset & habilis ad prosequens habens &
 siens dotem suam per breve de dote secundum
 debitam

debitam formam & ordinem Communium Regum huius Regni eodem actu sive aliqua lege aut provisione in contrarium inde non obstant p[ro]ut in eodem actu plenius continetur Et idem L. p[ro]v. ulterius dicit q[uo]d p[ro]f[ess]or nuper Rex Henricus octavus fuit seiscus de scitu q[uo]d. in q[uo]d. in dominio suo ut de feodo & sic inde seiscus existit idem nuper Rex postea videlicet (tal die & anno) per litteras suas Patentes gerend[as] v[er]o apud W[estm]onasterium eisdem die & anno de gracia sua speciali ac certa scientia & mero motu suis debet & concessit p[ro]f[ess]or D. in vita sua & eidem Ducisse adunc uxori sue p[ro]f[ess]or scitum q[uo]d. habens & tenens eisdem D. & Ducisse p[er] termino vitarum suarum & eorum alterius vivens viventi remanere inde post mortem eorundem Ducis & Ducisse heres de corpore ejusdem Ducis p[ro]creat Quorum quidem litterarum Patencium p[re]textu idem Dux & Ducissa fuer[unt] de p[ro]f[ess]or scitu q[uo]d. cum p[ri]m[us] seiscus videlicet idem Dux in dominio suo ut de feodo talliata & p[ro]f[ess]or Ducissa in dominio suo ut de libero tenemento Et sic seiscus existit idem Dux postea apud W[estm]onasterium in Corn[ubie] obijt & p[ro]f[ess]or Ducissa ipsum suavit[er] & se tenuit in p[ro]f[ess]or scitum q[uo]d. cum p[ri]m[us] & fuit & adhuc existit inde seiscus in dominio suo ut de libero tenemento p[er] jus accrescendi q[uo]d. aq[ui] p[ro]f[ess]or & ex[ist]it inde agreeando & consensiendo ad juncturam illam a tempore mortis p[ro]f[ess]or Ducis hucusq[ue] continue percepit & habuit Et hoc paratus est verificate unde petit iudicium & p[ro]f[ess]or D. & Ducissa dotem ipsius Ducisse de tenementis p[ro]f[ess]or cum p[ri]m[us] in demanda p[ro]f[ess]or superius spec[ie] habere debeant q[uo]d.

Appeal for the death of the Husband against the Principal and Accessories.

Vert. ff. **E**. nup de gc. als die J. A. nup de gc. J. W. nup de gc. & L. B. nuper de gc. attach fuer' per corpora sua ad respons' P. que fuit uxor T. S. Gen de morte pō T. S. quondam viri sui unde eos appellat Et sunt pleg' de prosequens scilicet L. A. de Lond Gen & W. C. de gc. Et unde eadem P. per T. W. jun & J. F. Accoznatos suos confundim & debim iuxta formā deanti gc. instanter appellat pōict C. D. J. A. J. W. & L. B. de eo qd nbi pōict T. S. fuit in pace Dei & dicti Domini Regis nunc apud S. pōict in Corn pōict Herisford sexto die Epail anno gc. circa horam quartam post meridiem eisdem diei ibi scilicet apud S. pōict in pōict Corn Hertf. ven pōict J. A. J. W. & L. B. ac felonice & ut felones dicti Domini Regis nunc ex malis suis pccogitat & insult pmedicat contra pacem dicti Domini Regis nunc coram & dignitates suas die anno hora loco & Corn Hertf. pōict & in plat T. S. adunc apud S. pōict in pō Corn Hertf. insult fecer Et pōict L. B. cum quodam gladio de ferro & calybe vocat a Rapier ad valentiam trid solidozum & quatuor denar quem ibidem L. in manu sua dextra adunc eodem sexto die gc. apud S. pō in pō Corn Hertf. habuit & tenuit pōict T. S. in & super dextrum genu ipsius T. S. tunc apud S. pō felonice voluntarie & ex malitia sua pccogitat percussit & pupugit dans eidem T. S. adunc & ibidem scilicet apud S. pō cum gladio pōict in & super dextrum genu ipsius T. S. & pō unam plagam mortalem pfunditat sex pollicum & laticus unius pollicis de qua quidem plaga mortali pōict T. S. adunc apud S. pōict & pōict Corn Hertf. instanter obiit Et pōict J. A.

J. A. & J. W. apud D. pōict felonice & ex malitiis suis pōigitat fuer' adiuncti pōentes adillantes abettari pōcurare cōsultare & manuteneri dīct R. B. ad feloniam & murdum pōict in forma pōict felonice faciens & perpetrans contra pacem dīcti Domini Regis nunc eorū & dignitates suas Et sic pōict L. B. J. A. & J. W. pōict L. B. dicto sexto die Maii anno gr. apud D. pōict in pōict Corā Hertf. felonice voluntarie & ex malitiis suis pōigitat interfecer' & mardjaver' contra pacem dīcti Domini Regis nunc eorū & dignitates suas Et pōict E. D. ante feloniam & mardum pōict in forma pōict fact' scilicet quinos die Maii anno gr. apud D. pōict in Corā Hertf. eidem L. B. J. A. & J. W. ad faciens & perpetrans feloniam & murdum pōict modo & forma pōict ex malitia sua pōigitat malitiose & felonice inuocabit pcurabit & consulit Anglice did cōmiser' Et etiam J. D. sciens pōict L. B. J. A. & J. W. feloniam & murdum pōict in forma pōict fecisse ipsos L. B. J. A. & J. W. postea scilicet pōict leuē die Maii gr. apud D. pōict in Corā Hertf. pōict pōict feloniam & murdum pōict p ipsos L. B. J. A. & J. W. in forma pōict fact' felonice receptant concealabit hospitabit Anglice did lodge & confortabit ac ipsos ad fugandū & escapandū p feloniam & mardum pōict modo & forma pōict fact' adiuvabit Anglice did help excitabit & consuluit contra pacem gr. Et quam cito iidem felones & mard pōict in forma pōict fecissent fugerunt dīcti pōict recent' insecut' sunt de villa in villam usq; quatuor pōpinqūos Et ulterius quousq; gr. Et iidem felones feloniam & murdum pōict in forma pōict eis imposuit' velint dedicere pōict p. hoc pōrata est verus eos pōbare pōt Curia gr.

Fresh suit.

Et poict C. D. J. A. J. W. & L. B. in p[ro]p[ri]is personis suis vend & defend v[er]m & injuriam quando &c. omnem feloniam & murdum & quicquid &c. Et separat dicunt q[uo]d ipsi in nullo sunt inde culpabiles Et inde de bono & malo separatim ponunt se super Patriam Et poict P. similiter Joco &c.

Det sur Obligac' versus Administratric'. Def. plede plene administravit Quer. replic' que il ad prosecut' original Writ vers. Def. & fa Baron & proceed al Issue & abate sur mort de Baron, & il recent. exhibuit Bill. Note, le Bill fuit exhibit Pasch. 19 Car. 2. Sur Obligac. plene administravit plede.

Precladi non debet quia dicit q[uo]d d[omi]n[u]s ante exhibitionem bille poict scire (tali die & anno) idem Quer' p[er] recuperatione debiti poict ei in forma poict cretore & insolut existent p[re]sent fuisse errata Cur' Canc' dicti Domini Regis nunc (ad Cur' Canc' apud Westm in Com' p[re]s[ent] tunc existent) quoddam h[er]ede original dicti Domini Regis filius quondam J. S. nuper de &c. & poict Elizabetham tunc uxorem ejus nup[er] administratricem bonorum & catallorum que fuer' C. S. qui obiit incesat nup[er] dict' &c. tunc Wic' Esser. direct' p[er] quod quidam h[er]ede originale p[re]cept' fuit p[re]stat tunc Wic' Esser. quod p[er]pet poict J. & Eliz. q[uo]d iuste & sine dilacione redderent dict' (Quer') poict 40 l. quas ei iniuste detinebant Et nisi fecissent Et poict (Quer') fecisset poict tunc Wic' securum de clamo[re] suo p[re]sequens tunc summon' p[er] bonos summon' poict J. & Eliz. q[uo]d essent coram Justiciariis dicti Domini Regis apud W. in D[omi]nab Sancti Hillarii ostens[um] quare non fecissent Et q[uo]d idem Wic' haberet summon' & h[er]ede illud postea in D[omi]nab

Quod Sancti Hillarii p̄dicti coram Justic' dñi Domini Regis apud W. p̄dicti J. & Eliz. ad h̄re p̄dicti comparaverunt & p̄dicti (Quer') superius versus eos narravit Et p̄dicti J. & Eliz. inde placitaverunt ad exitum Possessionis scilicet (tali die & anno) apud H. p̄dicti in Parochia & Warda p̄dicti J. obiit ac ratione inde h̄re p̄dicti originale p̄dicti & tot p̄dicti. inde cassat fuer' Et idem (Quer') recent' postea exhibuit billam ipsius Quer' hic in Cur' ipsius Domini Regis versus p̄dicti Elizabetham Et p̄dicti Quer' ulterius dicit qd h̄re originale p̄dicti p̄dicti fuit & billa p̄dicti exhibita fuit versus p̄dicti Elizabetham p̄ debito p̄dicti & non pro alio debito Et idem (Quer') ulterius dicit qd tempore impetrationis h̄re p̄dicti p̄dicti (Def.) habuit diversa bona & catalla que fuer' p̄dicti C. d. tempore mortis sue in manibus suis administrans ad Valentiam debiti p̄dicti unde eas (Def.) eis (Quer') de debito suo p̄dicti satisfecisse potuit videlicet apud H. p̄dicti in Parochia & Warda p̄dicti Et hoc &c. unde &c.

Rej. Non recent. exhibuit billam.

Et p̄dicti (Def.) dicit qd p̄dicti (Quer') non recent' exhibuit billam ipsius Quer' in Cur' Domini Regis hic versus ipsam (Def.) modo & forma p̄dicti (Quer') superius inde placitans allegavit Et de hoc ponit se super Patriam &c.

Barr al Bond.

Plede que le Execut' del Def. marie le Debtor.

Actio non Quia dicit qd post confessionem scripsit p̄dicti R. T. in vita sua apud C. p̄dicti condidit testamentum & ultimam voluntatem sua in scriptis ac per idem testamentum suum p̄dicti Eliz. Executricem testamenti illius constituit & ordinavit &c. postea obiit post cuius mortem eadem Elizabetha p̄dicti testamentum p̄dicti R. T. in vita

bita juris forma probabit ac onus executionis testamenti illius super se suscepit Et postea & ante diem impetrationis huius originalis ipsius Eliz. scilicet (tali die & anno) eadem Eliz. apud C. p̄cepit in virum p̄lat Jac. H. ac ratione inde tam omnes actiones super p̄dict script obligatio habens quam p̄dict debitum 10 l. sup p̄dict script obligatio per penitus in lege extincta fuit & exonerata debener & adhonerat existit Et hoc patet &c.

Action brought by a Man and his Wife for scandalous Words, *That she had a Child* dum sola fuit.

A. B. P. Gen & C. uxor ejus queruntur de C. A. in custod p̄arr &c. p̄ eo videlicet qd cum ead C. bonorum nominis fame conditionis conversationis & gesture a tempore natiuitatis sue hucusq fuerit ac dum ipsa sola non solum vitam honestam & immaculatam degit verumetiam ut semper castam seipsam gesserit habuerit & gubernaverit abs quovis corrupt incasto p̄vado aut malo videri genere intact & immaculat remansens ex venerabili & generosa stirpe in Comitatu p̄dict prognata existit p̄teritum cuius non solum eadem C. consanguineorum suorum verumetiam quamplurimorum aliorum Domini Regis fidelis subdit benevolentiam & amicitiam sibi conciliaverit Cumq quidem A. H. Gen avunculus ipsius B. magnas diversasq annuales exhibitiones eid B. dedisset ac omnia certas tenementa sua eid B. post mortem suam relinquere in animo habuisset (liberorum aliquem de corpore suo exire non habens) p̄dict Def. p̄missorum non ignarus ac percipiens ipsam B. p̄lat C. matrimonii causa alibi fuisse ipsamq C. in uxorē suā ducere intendens diabolica & maciōsa mēte sua machinans & intendens non solum bona nomen & famam p̄dict C. ledere

ledere verum etiam ipsum B. in tantum odium
 & displicentiam apud A. R. Abunculum suum
 inducere ut idem Abunculus ejus omnia terras
 & tenementa sua aliis personis post mortem suam
 concederet ac assuraret ac p[ro]dict B. inde penitus
 exhereditaret & ut p[ro]dict B. & C. post sponsalia
 inter ipsos B. & C. celebrata scilicet (tali die & anno)
 apud ge. dixit locutus fuit & p[ro]palavit Abunculo
 p[ro]dict & A. uxorem ejus in p[re]sentia quamplurimorum
 sive digni Domini Regis nunc subdit de p[ro]dict C.
 dum ipsa sola fuit hec falsa sita & scandalosa
 Anglicana verba sequendi videlicet I (ipsum p[ro]dict
 C. A. modo Def. innuendo) marvel that you (p[ro]dict
 Abunculum innuendo) will bestow your Kinsman
 (ipsum B. modo Quer. innuendo) on that base
 Woman (C. uxorem p[ro]dict B. modo Quer. innu-
 do) for she (ipsam C. iterum innuendo) hath
 had a Child ubi rebera eadem C. dicto tempore
 dictionis & p[ro]p[re]lationis verborum illorum ut
 a toto tempore vite sue usq[ue] sponsalia inter ip-
 sum B. & C. celebrata in pura virginitate sua re-
 mansisset & nullam p[ro]lem habuisset Quor[um] qui-
 dem scandalosorum verborum dictionis & p[ro]p[re]-
 lationis p[re]sertim eadem C. non solum in bonis no-
 mine fama & estimatione suis quibus p[re]sentis
 gub[er]nata fuerat multipliciter lesa & denigrata es-
 sisse verum etiam idem B. in magnam displice-
 ntiam & odium p[ro]dict A. R. Abunculi sui incitavit
 ac diversas annuales exhibitiones quas p[ro]dict A. R.
 ejus Abunculus ei dare solitus fuerat (ulterius
 idem facere desistit scilicet) amisit ac idem A.
 Abunculus ip[su]s B. p[ro]dict scandalosis verbis
 ip[su]s C. fidem adhibens p[ro] eo q[uo]d idem B. ip-
 sam C. in uxorem duxit terras tenementa sua
 annui valoris centum librarum diversis aliis per-
 sonis eidem B. ignot[is] habens post mortem ip-
 sius A. Abunculi sui concederet & assuraret a p[ro]-
 dict F. & A. post sponsalia p[ro]dict huc usq[ue] indies
 maxime

maximo depauperat sunt unde idem Quier dicunt
qđ ipſi deteriorat sunt & dampnum habent ad va-
lutionem 3000 l. Et inde pduc ſectam.

Declaration in Covenant brought by a Man and his
Wife, where the Lessor enters upon the posses-
ſion of the Leſſee and with their conſent enſcoffs
the Plaintiff (Feme ſole) as Assignee.

Hill. 23 Car. 2. Rot. 1667. B. C.

Warr. ſi. **H** J. nuper de gc. ſummonit fuit ad
reſpondens T. H. & Anne uxor
ipſius assigni E. P. Cui de placito qđ teneat eis
conventionem inter p̄dict E. & p̄fat H. J. fact ſe-
cundum vim ſozma & effectum quarundam Inden-
turarū inde inter eos conſectarum Et unde libd
T. H. & A. per gc. Accoznacum ſuum dicunt qđ
cum p̄dict E. fuit ſeſſus de viginti acris paſture
cum percini in W. in Com p̄dicte in dominico
ſuo ut de ſeodo Et ſic inde ſeſſiſt exiſſent idem
E. (tali die & anno) apud W. p̄dict per quarundam
Indenturam ſuam inter ipſum E. per nomen E.
P. & ex una parte & p̄fat H. J. per nomen gc.
& altera parte fact cujus alteram partem ſigil-
lis p̄dict (W. ſi.) ſignat libem T. H. & A. hic in
Curia proſerunt cujus dat eſt iſſdem die & anno
omittiſſet conceſſit & ad firmam tradidiſſet & per
eandem Indenturam dimiſſit conceſſit & ad firmam
tradidiſſet p̄fat H. J. tenementis p̄dict cum percini
per nomina omnium illarum ſuarum ſeparatim
ſive parcellarum paſture (So recite the Deed and
Covenants and the Covenant to repair, ut ſequitur)
Et p̄dict H. J. pro ſeipſo Executoribus Admini-
ſtratoribus & Assignatis ſuis conſentiſſet & agree-
ſſet ad & cum p̄dict E. P. Heredibus & Assign-
atis ſuis p Indenturam p̄dict modo & ſozma ſe-
quent

quent videlicet qđ ipse Pđict H. I. Executores
 Administratores & Assignati sui de tempore in
 tempus & ad omnia tempora durante dicta di-
 missione (Anglice Lease) ad eorum vel alicujus
 eorum propria custodiā & miā manutenerent re-
 pararent & custodierent sepes fossas pontes ja-
 nuas parca (Anglice Pounds) repagula palos
 (Anglice Pales) postes senturas (Anglice Fences)
 & clausuras (Anglice Inclosures) dictis pmissis
 spectand in & per omnes requisit (Anglice need-
 ful) & necessar reparationes quando necessitas re-
 quiret & ad quamlibet prem inde sufficient repa-
 mantur & custodit ut ipsi recepissent eadem in
 fine expiratione vel al determinatione dimissio-
 nis Pđict Pđict E. III. Hereditibus vel Assignatis
 suis quiete & pacifice relinquerent & solum red-
 derent p̄p̄orū p eandem indenturam inter alia ple-
 nius apparet Virtute cuius dimissionis Pđict
 H. I. in tenementa Pđict cum p̄c̄in except p̄
 except intravit & fuit inde possessionat ipso H. I.
 sic inde possessionat existend & Pđict E. III. de re-
 versione tenementorum Pđict cum p̄c̄in in domi-
 nico suo ut de feodo scilicet existend id E. III. postea
 scilicet (tali die & anno) in tenementa Pđict cum
 p̄c̄in super possessionat ipse H. I. inde intravit
 & de eisdem tenementis cum p̄c̄in cum assensu &
 consensu Pđict H. I. adunc feoffavit Pđict An-
 nam dum ipsa sola fuit Habens & tenens eisdem
 Anne Hered & Assignatis suis imppetuum Vir-
 tute cuius quidam feoffament eadem Anna dum
 ipsa sola fuit fuit scilicet de tenementis Pđict cum
 p̄c̄in in dominico suo ut de feodo ipsa Anna sic
 inde possessionat existend Pđict H. I. in tenemen-
 ta Pđict clamando terminum suum Pđict inde in-
 travit & fuit inde possessionat p̄o residuo ter-
 mini Pđict Et sic inde possessionat existend ac e-
 dem Anna de reversione tenementorum Pđict cum
 p̄c̄in in dominico suo ut de feodo scilicet existend
 eadem

eadem Anna postea scilicet (tali die & anno) apud
 W. Pdict cepit in virum Pdict T. per quod libem
 T. & A. fuerit durante residuo Pdict termino decem
 annorum scilicet de reversione tenementorum Pdict
 cum pñd in dominio suo ut de feodo in iure
 ipsius Anne usq; & ad finem termini Pdict & ab
 inde semper postea hucusq; illud T. & A. fuerunt
 & adhuc scilicet existunt de tenement Pdict cum pñd
 in dominio suo ut de feodo in iure ipsius A. Et il
 lud T. & A. ulterius dicunt qd Pdict tempore confect
 indenture Pdict necnon tempore prime intrationis
 Pdict H. J. in tenementa Pdict cum pñd Virtute
 dimissioni Pdict omnia & singula sepes fosse
 pontes janua parca (Anglice Pounds) repagula
 pali (Anglice Pales) fence & clausum Pdict te
 nementis cum pñd superius dimiss. spectand fue
 runt bene & sufficienter repat. Quodq; post con
 fectiōem indenture Pdict & post desponsalia in
 ter ipsos T. & A. celebrat & ante diem impetra
 tionis brevis originalis ipsorum T. & A. nec non
 ante finem termini Pdict scilicet (tali die & anno)
 & ab eodem vicesimo die &c. usq; & ad finem ter
 mini Pdict sepes videlicet mille perticat septum
 quodlibet perticat inde pretii 2 s. janue videlicet
 10 janue quelibet janua inde pretii 10 s. pale vi
 delicet mille pale quelibet pala inde pretii 4 d.
 Pdict tenementis cum pñd superius dimiss. spectand
 fuerit fract dirupt prostrat & in magno decalu p
 defectu reparationis inde Et qd sepes janue pala
 le fract dirupt & prostrat existend p Pdict H. J.
 in fine termini Pdict eisdem T. & A. relict fuer
 minime reparat contra formam & effectum Inden
 ture Pdict Pdict tamen H. J. licet sepius requisit
 Pdict sepes januas & pala reparare minime cura
 vit Et sic idem T. & A. dicunt qd ipse H. J.
 Executors Administratores & Assignati sui de
 tempore in tempus & ad omnia tempora durante
 dimissione (Anglice Lease) ad eorum vel alicujus

propria custas & mis manutenerent repararent & custodirent sepes januas & pala &c. dictis pmissis spectand in & per omnes requisit (Anglice necessul) & necessar repaciones quando necesse requireret Et eadem & quamlibet partem inde sufficienter reparat manutent & custodit ut ipsi recepissent eadem in fine expirationis vel al determinationis dimissioni dicti dicti C. & P. Petribus vel Assignatis suis quiete & pacifice relinquere & sursum redderent eidem T. & A. non tenent sed infreger ac ill eis hucusq contradixerunt & adhuc contradicunt Unde dicunt qd deteriorat sunt & damna habent ad valent &c.

Narratio pro Administrat' de bonis non administrat' per uxor' ejus versus duos Executores.

H. C. & Anna uxor ejus execut testamenti A. C. nup dict &c. & Isabella Cohereditrix testamenti pd summon fuer ad respons W. & administrat bonoz & catalloz que fuer J. R. per Judicem R. Administratricem bonozum & catalloz que fuer pstat J. qui obiit intestat non administrat de placito quod reddant ei 30 l. quas ei injuste detinet Et unde idem W. per &c. Attornatum suum dic qd cum pdict A. C. in vita sua (die loco & anno) p quoddam scriptum suum obligatorium &c. concessisset se teneri pstat J. in vita sua in pdict 30 l. solvend eidem J. cum inde requisitus fuisset pdict tamen A. C. in vita sua ac pdict Anna & Isabella post mortem ipsius A. dum eadem Anna sola fuit necnon eidem P. & Anna & Isabella post desponsalia inter eisdem P. & Annam celebrat licet sepius requisit pdict 30 l. pstat J. in vita sua seu pdict W. & Judiche in vita ipsius Judiche post mortem ipsius Johannis necnon eidem W. post mortem ipsius Judiche cui administratio omnium bonozum & catalloz que fuer

fuer' p̄dict Johannis tempore mortis sue p̄dict
Judith administratrix bonorum & catallozū que
fuer' p̄fat Johannis non administrat p̄ tal die
& anno apud E. post mortem ipsius Judithe
commissa fuit non reddider' sed ill' eis reddere
contradixit ac p̄dict H. & Anna & Isabella ill' ei-
dem Willielmo adhuc reddere contradixit ac in-
iuste detinent unde dicit qđ deteriorat &c.

Alicui.

I. W. & C. uxor ejus administratrix omnium
& singulorum bonorum & catallozū jurium & cre-
ditorum que fuer' R. F. tempore mortis sue p̄ S.
F. nup Executricem testamenti p̄dict R. non ad-
ministrat queruntur de R. F. nup de L. Armig
als dicit R. B. de Interiori Templo London
Gen in custodia Parr &c. de placito qđ reddat
eis centum libras legalis monete Anglie quas eis
injuste detinet p̄ eo videlicet qđ cum p̄dict R. B.
(tal die & anno) apud L. p̄dict videlicet in Pa-
rochia beate Marie de Arcubus in Warda de
Cheap p̄ quoddam scriptum suum obligatorum
sigill' ipsius R. sigillat Curieq; dicti Domini Re-
gis nunc hic ostensū cūsus dat est eidem die &
anno cognū se teneri & firmiter obligat' p̄fat R.
F. in vita sua in p̄dict centum solidis solvend' eidem
R. F. cum inde requisitus esset p̄dict tamen R.
B. licet requisitus &c. p̄dict centum libras p̄fat
R. in vita sua seu p̄fat S. in vita sua post mor-
tem p̄dict R. F. seu eidem E. post mortem p̄dict
S. dum sola fuit cui quidem E. administrat om-
nium & singulorum bonorum & catallozū jurium
& creditorum que fuer' p̄dict R. in tempore vite
sue p̄ S. F. nup Executor testamenti p̄dict pre-
dict R. non administrat cum testament' p̄fat
R. annex p̄ post ipsius S. mortem scilicet
(tal die & anno) apud L. p̄dict in Parochia &

B b 2

Warda

Marta p̄dict debet modo commissa fuit seu eidem J. & C. post desponsalia inter ipsos celebrata vel eorum alicui non solvit set ill' p̄fat R. F. in vita sua ac p̄fat S. post mortem ipsius dum sola fuit ac eidem J. & C. post desponsalia inter ipsos celebrata & eorum cuilibet solvere omnino contradixit & ill' eidem J. & C. adhuc solvere contradixit ac iniuste detinet in retardatione administrationis bonorum & catallorum p̄dict & ad dampnum ipsorum J. & C. 40 l. & inde p̄duc lectam &c. Et plerumque hic in Curia dicti Domini Regis nunc idem J. & C. literas administratorias &c.

Indebitatus Assumpsit per virum & uxorem pro denariis accommodat' defendent' per uxorem dum sola fuit.

Banc ff. **C** B. & H. uxor ejus queruntur de J. L. in custod' p̄fat &c. p̄ eo videlicet qd p̄ J. L. tal' die & anno apud L. in Comd p̄ indebitat' fuisset p̄fat H. dum ipsa sola fuit in 16 l. legalis &c. pro diversis denariorum summis p̄ J. L. dum sola fuit p̄fat Def. sup requisitionem ipsius Def. ante tempus illud accommodat' p̄dictis J. L. eidem J. H. sic inde indebitat' existent' idem J. in consideratione inde postea scilicet (eodem primo die Aprilis die & anno) apud L. p̄ in Comd p̄dict sup se assumpsit p̄fat H. dum ipsa sola fuit ad tunc & ibidem fideliter promisit qd ipse idem Def. p̄dict 16 l. eidem H. cum inde requisit' esset bene & fideliter solvere & contentare vellent Cumq; etiam p̄dict H. dum ipsa sola fuit scilicet (primo die Aprilis die & anno supradict') apud L. p̄dict in Comd p̄dict ad special' instanc' & requisitionem p̄dict Def. mutuo dedisset & accommodasset eidem Def. 20 l. similis monete p̄dict Def. in consideratione inde postea scilicet eodem primo die Aprilis anno viceesimo supradict' apud L. p̄dict in Comd

Coram p[ro]dicto super se assumpsit p[re]stare q[uod] dum ipsa sola fuit adtunc & ibidem fideliter p[ro]misit q[uod] ipse idem Def. p[ro]dict 20 l. eidem H. cum inde postea similiter requisit[us] esset bene & fideliter solvere & contentare vellet p[ro]d[um] tamen Def. separatim p[ro]missiones & assumptiones suas p[ro]dict p[re]stat H. dum sola fuit in forma p[ro]dict facti minime curans sed machinans & fraudulenter intendens p[ro]dict C. dum ipsa sola fuit & p[ro]dict C. & H. post desponsalia inter eos celebrata in hac parte callide & subdole decipere & defraudare p[ro]dict separatim denariozum summas in toto se attingend[um] ad & p[re]stat H. dum ipsa sola fuit aut eisdem C. & H. post desponsalia inter eos celebrata vel eorum alter non solvit iuxta separatas p[ro]missiones & assumptiones ipsius Def. nec eis aut eorum alter p[ro]inde hucusq[ue] aliquammodo contentabit licet ad hoc faciend[um] p[ro]dict Def. & p[ro]dict C. dum ipsa sola fuit ac p[ro]dict C. & H. post desponsalia inter eos celebrata scilicet tali die & anno apud L. p[ro]dict in Coram p[ro]dict requisit[us] fuisset sed p[ro]dict lib[er] eisdem C. & H. vel eorum alter solvere hucusq[ue] omnino recusavit & adhuc recusat unde iidem C. & C. dic[unt] q[uod] ipsi deteriorat[ur] sunt Et dampnum habent ad valentia[m] Et inde &c.

Def. in Ejectment placitat Covert Baron.

Def. venit & petit Iudicium de h[er]edi p[ro]dict quia dicit q[uod] ipsa eadem (Def.) die impetrat[i]onis h[er]edis originalis ipsorum (Quer[er]is) fuit coopta de quodam A. B. viro suo videlicet apud S. p[ro]dict Et hoc parat &c. unde ex quo p[ro]dict A. non nominatur in h[er]edi p[ro]dict eadem (Def.) petit Iudicium de h[er]edi illo &c.

Repl.

Cassari non debet quia dicit qđ pđict (Def.) die impetrationis hzevis originalis ipsius (Quer) scilicet (tali die) apud D. pđict fuit sola absqđ hoc quod pđict (Def.) die impetrationis hzevis originalis ipsius (Quer) fuit cooperta de A. F. viro suo prout pđict (Def.) superius Allegavit Et hoc ꝑc. Unde ex quo pđict (Def.) transgress. & ejectionē pđict superius cognō idem Quer petit Iudicium & possessionē termini sui pđict una cum damnis ꝑc. sibi adjudicār.

Issue sur le
Traverse.

Et pđict (Def.) ut prius dicit qđ ipsa die impetrationis hzevis originalis ipsius Quer fuit cooperta de pđict A. B. viro suo prout eadem Def. superius allegavit Et hoc ꝑc.

Covert Baron plead post original^r purchased.

Et pđict (Def.) in propria persona sua vendit & petit Iudicium de hzevi pđict ꝑc. quia dicit qđ pđict (Quer) postquam ipsa tulisset hzeve suam pđictā versus eundem (Def.) scilicet (tali die & anno) apud C. pđict cepit in virum quendam J. C. adhuc superstitem & in plena vita existentē (videlicet) apud C. pđict & sic pđict (Quer) modo cooperta de viro existit Et hoc ꝑc. Unde petit Iudicium de hzevi illo ꝑc.

Cassari non debet quia dicit qđ ipsa die impetrationis hzevis pđict ac semper postea sola fuit & non cooperta de pđict A. B. prout pđict (Def.) superius allegavit Et hoc petit qđ inquiratur ꝑ Patriam.

Qd'

Qd' Quer' cepit virum post darrein continuance.

Dicit qd post ult contid placiti p'dicti (scilicet) post tale retord' ult p'cessit de quo die loquela p'dict' ult continuat' fuit hic usq' ad hanc diem scilicet Octab' Hill & ante hunc die scilicet primo die & an'd' p' apud A. p'dict' p'dict' (Quer') cepit in virum quemdam A.B. qui quide' A. adhuc superstes & in plena vita existit videlicet apud A. p'dict' Et hoc p'c. Unde p'c.

Cassari non debet quia dicit qd post p'dict' (tale retord' & ante p'dict' Octab' Hill ipsa (Quer') non cepit p'dict' A. in virum suum put p'dict' Quer' allegabit Et hoc petat p'c.

Aliter.

Defendens placitat cooperta de Baron.

Actio non quia dicit qd eadem D. tempore exhibitionis hille p'dict' fuit coopert' de quodam S. ad tunc viro suo qui quidem S. apud C. in Com' Warr' adhuc superstes & in plena vita existit Qui quidem S. non nominatur in hilla p'dict' unde petat Iudicium si p'c.

P'cludi non debet quia dicit qd ipsa D. die impetrationis hille sue p'dict' scilicet (tali die & anno) fuit sola absq' hoc qd ipsa eodem die seu unquam postea fuit cooperta de p'dict' S. put ipsa () superius allegabit Et hoc p'c.

Et p'dict' D. dicit qd ipsa () tempore exhibitionis hille p'dict' fuit cooperta de p'dict' S. ad tunc viro suo put ipsa superius allegabit Et hoc p'c.

N'ung; accouple en loyal Matrimony.

Actio non quia dicit qđ eadem (Quer) nun-
quam fuit eidem R. legitimo matrimonio co-
pulat Et hoc paratus est verificare ubi & quando
ac put Cur' hic considerab. &c. Unde petit Judi-
cium &c.

Repl'.

Precludi non debet quia dicit qđ ipsa ()
apud D. in Comd War' in Diocell. C. & Litchl.
psat R. in legitimo matrimonio fuit copulat Et
hoc paratus est verificare ubi & quando &c. ac put
Curia Regis hic considerab. &c. Et quia hujus-
modi cause cogn' ad sozum spectat Ecclesiasticum
Ideo mandat est Episcopo L. & C. loci pđ Dio-
cellano qđ convocat coram se in hac parte con-
vocand rei veritat' super pmissis diligenter in-
quir' Et quid inde inquisit' constare fac' hic Cras'
Animarum per Literas suas Patentes & clausas
idem dies dat' est pibus pdict' ibi &c.

De Brevis, quia matrimonium non fuit solempni-
zatum inter Querentem & uxorem ejus die im-
petrationis ejusdem.

H. F. C. &c. summonitus fuit ad respons' R.
H. Gen' & A. uxori ejus Executric' testamenti
W. G. Gen' de placito qđ reddat eis xx L. quas
eis injuste detinet.

Et pđ f. per A. B. Attoznatum suum venit &
petit Judicium de brevis pdicto quia dicit qđ ma-
trimonium die impetrationis brevis originalis
pdict' R. & A. inter eos secundum Legem Eccle-
siasticam hujus Regni Anglie non fuit solemnizatum Et hoc paratus &c.

Cassari

Castari non debet quia dicit qđ matrimonium inter ipsos R. & A. diu ante impetrationem hęređis originalis ipsorum R. & A. scilicet vicesimo die Junii Anno Regni Domini Regis nunc primo secundum Legem Ecclesiasticā hujus Regni Anglie fuit solemnizat videlicet apud B. pđict Et hoc petit &c.

Debt against an Executrix and her Husband for Rent arrear on a Lease made to the former Husband.

Et unde idem R. B. per J. B. Attoznatum suum dicit qđ cum ipse tali die & anno apud &c. p quandam Indenturam suam inter ipsum R. B. ex una parte & pđict J. in vita sua ex altera parte cuius alteram partem sigill &c. dimississet pđict J. in vita sua totum illud &c. habens &c. reddens &c. p equales portiones solvens Virtute cuius dimissionis pđict J. in vita sua in tenement pđict cum pđict supius dimiss. intravit & fuit inde possessionat Et sic inde possessionat existend tali die & anno apud B. pđ condidit testamentum suum & pđ P. Executricem ejusdem testamenti sui constituit Et postea scilicet eidem die & anno apud J. pđ obiit de tenementis pđ cum pđict in forma pđ possessionat post cuius mortem pđ R. onus Executionis testamenti pđ super se suscepit & in tenementa pđ cum pđict intravit & fuit inde possessionat & sic inde possessionat existend apud J. pđ cepit in virum pđ P. R. ac pđ 100 l. de reditu pđ p uno anno integro finit ad (talem effectum) & p spacium 14 dierum prox. post idem festum eidem R. post mortem pđ J. aretro fuerunt & abuc existunt minime solut p quod actio accrevit &c.

Debt

Dett per Baron & Feme Administrat' d'Obligee ver-
sus Heredem d'Obligor.

T H. nup de London Amiger filius & heres
C. S. nup dict' &c. summonit fuit ad re-
spondens J. D. & Jane uxor' ejus administrat' bo-
nozum & catallozum que fuer' T. C. Cui qui obijt
interfuit &c. de placito qd reddat eis 100 l. quas
eis injuste detinet &c. Et unde iidem J. & J.
p J. S. Accoznatum suum dicunt qd cum pdict'
C. pater T. S. cujus heres ipse est in vita sua se-
cundo die Martii anno &c. apud London in Pa-
rochia &c. in Warda &c. p quoddam scriptum suum
obligatozum concessisset se teneri pstat T. C. in
vita sua in p 100 l. solvens eidem T. C. cum
inde requisitus fuisset & ad eandem solutionem
bene & fideliter faciens p C. obligasset se & he-
redes suos p idem scriptum p tamen C. in vita
sua ac p T. S. filius & heres ipse C. post mor-
tem ipsius C. licet sepius requisitus 100 l. pstat
T. C. in vita sua seu eidem J. post mortem ipsius
T. dum ipsa sola fuit cui administratio omnium
bonozum & catallozum que fuer' ejusdem T.
tempore mortis sue. W. D. Legum Doctozem
Curie Pzerogative Cantuar' Magistrum Custodem
sive Commissarium legitime constitut' ibi die &c.
anno &c. apud London in Parochia & Warda
p commissa fuit seu eidem J. & J. post dispon-
salia inter eos celebrat non reddiderunt sed illi
eis reddere contradixerunt ac pdict' T. S. illi, eis-
dem J. & J. reddere contradixit ea injuste detinet
Unde dic' qd deteriorat sunt & dampnum ha-
bet ad valens & inde pduc' sedam Et pferunt
hic in Curia tam script' p quod debicum p in
fozma p testatur Cujus dat' est p secundo die
Martii anno &c. quam Literas Administratozios
p Commissar' que commissio Administrationis
p in fozma p testantur &c.

Debe

Debt for Rent upon a Lease for years against Baron
and Feme Executor of the Lessee.

A B. Armiger queritur de J. W. & C. uxor
ejus Executrice testamenti & ultime volun-
tatis R. P. de placito qđ reddant ei 30 l. quas ei
injuste detinent &c. p eo videlicet qđ cum idem
A. B. die &c. p quandam Indenturam inter ip-
sum A. ex una parte & p̄fat R. P. in vita sua ex
altera parte factam cusus alteram ptem sigill' p̄
R. P. signat idem A. B. hic in Curia p̄fert cu-
sus dat est iisdem die & anno dimississet concessit
& ad firmam tradidisset dicto R. P. totum illud
messuagium &c. habend & occupand dictum mes-
suagium & omnia alia p̄missa p Indenturam p̄
dimissa sive mentionat soze dimissa & quamlibet
ptem ejusdem dict R. P. Exec' Administr' & Al-
signat suis a seko &c. p̄or. sequend dat Indentur'
p̄ usq̄ plenam finem & terminum &c. extunc &c.
si idem A. B. & C. tunc uxor ejus & J. ejus filia
vel aliquis eorum tam diu viberit reddendo (p
ut p Lease) put p eandem Indenturam inter alia
plenius apparet Virtute cusus dimissionis p̄dict
R. P. in Crastino p̄ festi &c. p̄or. post dat In-
dentur p̄ in messuag' p̄ cum p̄tin' intrabit & fuit
inde possessionat Et sic inde possessionat existend
Idem R. P. postea scilicet die &c. apud &c. con-
didit testamentum & ultimam voluntatem suam
in scriptis & per eandem ultimam voluntatem
suam p̄dictam C. Executricem testamenti sui
p̄dict constituit & ordinabit Et postea scilicet
die &c. anno &c. apud &c. obiit de messuagio p̄
cum p̄tin' sicut p̄fertur possess. post cusus morte
p̄ C. testament p̄ in debita Juris forma p̄bavit
& onus Executionis testamenti sui p̄ super se
suscepit Et ut Execut' & Testament p̄ in mes-
suag' p̄ cum p̄tin' intrabit & fuit inde possessio-
nat

naſ ratione Executionis Teſtamenti ꝑꝑ Et ſe
 inde poſſeſſional exiſtend eadem A. poſtea ſcilicet
 (talī die ꝫ anno) apud ꝑꝑ cepit in virum ꝑꝑict
 J. W. Virtute cujus iidem J. ꝫ C. in iure ip-
 ſius C. fuer ꝫ adhuc exiſtunt de meſſuag ꝑꝑ cum
 ꝑꝑid poſſeſſional ratione Executionis Teſtament
 ꝑꝑ ꝑꝑ. 30 l. de redditu ꝑꝑ ꝫ uno anno integro
 finit ad feſtum ꝑꝑ. ult ꝑꝑerit poſt mortem ꝑꝑict
 A. B. eidem R. B. aretro ſac ꝫ adhuc exiſtunt
 inſoluit ꝫ quod actio accrevit ꝑꝑ. (ut in al.)

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